TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 685

THE STATE OF SOUTH CAROLINA, PETITIONER,

vs.

RAY BAILEY, ALIAS RAY KEITH

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

PETITION FOR CERTIORARI FILED FEBRUARY 11, 1953

CERTIORARI GRANTED MARCH 23, 1953

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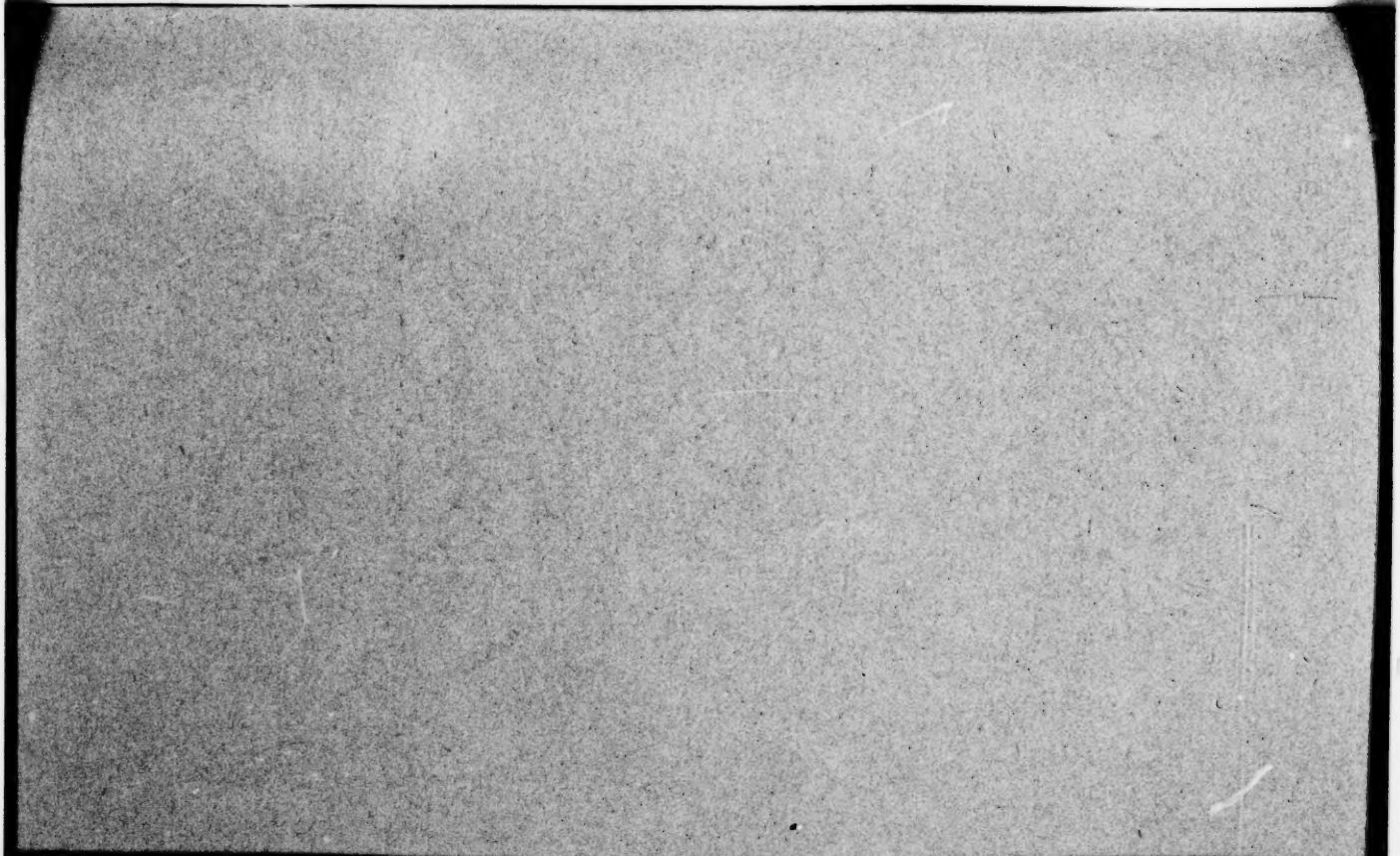

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

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[fol. 1] [Caption omitted]

IN SUPERIOR COURT OF JACKSON COUNTY

ARREST WARRANT

No. 338

THE STATE OF SOUTH CAROLINA,
County of Greenville:

Personally comes before me the deponent who makes oath that in this State and County, and in the township of Greenville, on the 1st day of May, 1932, the defendant, Ray Bailey, alias Ray Keith, did wilfully, intentionally, feloniously and with malice aforethought, did shoot, kill and murder one A. B. Hunt with a pistol or other fire arm, against the form of the Statute in such case made and provided, and against the peace and dignity of the State, and that deponent and C. E. Singleton, and others are witnesses for the State.

[fol. 2] J. E. Corea.

Sworn to before me 5th day of May, A. D. 1932.
Bates Aiken. Magistrate, Greenville County, S. C.
(L. S.)

STATE OF SOUTH CAROLINA:

To the sheriff of Greenville County or any lawful constable:

Arrest and bring before me Ray Bailey, alias Ray Keith, charged with murder and the witnesses for the State herein named.

Given under my hand and official seal, this 5th day of May, 1932.

Bates Aiken, Magistrate, Greenville County, S. C.
(L. S.)

(On the back appears the following:) 338. The State of South Carolina, County of Greenville. The State v. Ray Bailey, alias Ray Keith. Arrest warrant. Offense: Murder. Original. I appoint C. R. Bramlett, Sheriff, to execute this warrant. Bates Aiken, Magistrate, Greenville County, S. C. (Seal.)

The State of South Carolina, Executive Department, Office of the Governor

To all to whom these presents shall come, Greeting:

Whereas, I have issued papers for Ray Bailey, alias Ray Keith, who stands charged with the crime of Murder in Greenville County, South Carolina;

And whereas, agreeably to the provisions of the Consti- [fol. 3] tution of the United States, and an Act of Congress passed the Twelfth day of Feb., One Thousand Seven Hundred and Ninety-Three, I have demand- of His excellency the Governor of North Carolina for the delivery of the said Ray Bailey, alias Ray Keith, as fugitive from justice; and have also, in pursuance of the power vested in me by law, Appointed, and by these Presents I do Appoint and Commission C. R. Bramlett and L. W. Hammond Agents, on the part of this State, for the purpose of bringing the said Ray Bailey, alias Ray Keith, to this State, having jurisdiction of said Crime Aforesaid, whenever the Governor of said State of North Carolina shall cause him to be delivered up, agreeably to the requisition aforesaid.

These are, therefore, to request and require all persons to permit the said C. R. Bramlett and L. W. Hammond to receive and secure the said Ray Bailey, alias Ray Keith, and bring *them* unmolested into this State, having jurisdiction of said Crime.

Given under my Hand and the Seal of the Executive Department, at the Capital, in Columbia, this seventh day of May, in the year of our Lord One Thousand Nine Hundred and thirty-two, and of the Independence of the United States of America the One Hundred and Fifty-Sixth.

I. C. Blackwood, Governor. Charles H. Gerald, Private Secretary. (Seal of State of S. C.)

State of North Carolina, Executive Department

The Governor of North Carolina to the sheriff or other officer of the State of North Carolina to whom these presents shall come, Greeting:

[fol. 4] Whereas, It has been represented to me by the Governor of South Carolina that Ray Bailey, alias Ray Keith, stands charged with the crime of Murder, which he

certifies to be a crime under the laws of said State, committed in the County of Greenville, in the said State, and has taken refuge in the State of North Carolina, and the said Governor of South Carolina having, in pursuance of the Constitution and Laws of the United States, demanded of me that I shall cause the said Ray Bailey, alias Ray Keith, to be arrested and delivered to C. R. Bramlett and L. W. Hammond, who are duly authorized to receive him into *his* custody and convey him back to the said State of South Carolina.

And whereas, The said representation and demand is accompanied by Application, Affidavit, Warrant, etc., whereby the said Ray Bailey, alias Ray Keith, is shown to have been duly charged with the said crime, and with having fled from said State of South Carolina, and taken refuge in the State of North Carolina, which are duly certified by the said Governor of South Carolina to be authentic and duly authenticated.

Therefore you are hereby required to arrest and secure the said Ray Bailey, alias Ray Keith, wherever he may be found within the State of North Carolina, and afford him such opportunity to sue out a writ of habeas corpus as is prescribed by the laws of this State and to thereafter deliver him into the custody of the said C. R. Bramlett and L. W. Hammond, to be taken back to the said State, from which he fled, pursuant to the said requisition; and also to return this warrant and make return to the Governor of North Carolina within thirty days from the date hereof, of all your proceedings had thereunder, and of all the facts and circumstances relating thereto.

[fol. 5] In witness whereof I have hereunto set my hand and caused to be affixed the Great Seal of the State.

Done at our city of Raleigh, this 9th day of May, in the year of our Lord one thousand nine hundred and thirty-two, and in the 156th year of our American independence.

O. Max Gardner.

By the Governor:

Edwin Gill, Private Secretary. (Seal of State of N. C.)

STATE OF NORTH CAROLINA,
County of Jackson:

I hereby certify that I executed the within Warrant of Extradition on Ray Bailey, alias Ray Keith, in the County

and State aforesaid, on the 7th day of June, 1932, by arresting the said Ray Bailey, alias Ray Keith, and placing him in custody.

John J. Maney, Sheriff Jackson County.

In Superior Court of Jackson County

In the Matter of Ray Bailey, Alias Ray Keith

Petition for Writ of Habeas Corpus

To the Honorable Walter E. Moore, one of the Superior Court Judges of the State of North Carolina:

Your petitioner, Ray Bailey, respectfully showeth to Your Honor the following facts:

1. That your petitioner is imprisoned and restrained of his liberty by J. J. Maney, Sheriff of Jackson County.

2. That the cause of pretense of such imprisonment or restraint, according to the knowledge and belief of the [fol. 6] petitioner is, that he stands indicted for the murder of one A. B. Hunt, in the State of South Carolina, and he is held in the custody of the said Sheriff, J. J. Maney, of the County of Jackson and State of North Carolina, under extradition, issued by the Governor of South Carolina, and granted by the Governor of North Carolina. A copy of said warrant and extradition papers had been demanded by this affiant, and refused by the Sheriff.

3. That the said imprisonment and restraint is illegal, for that the defendant is charged with an offense in the State of South Carolina, to-wit, the murder of A. B. Hunt, on or about the 1st day of May, 1932, when, at which time, this affiant was in the State of North Carolina, and was not in the State of South Carolina; and that the legality of said imprisonment and restraint has not already been adjudged upon a prior writ of habeas corpus to the knowledge and belief of your petitioner.

Wherefore your petitioner prays Your Honor to grant to him the writ of habeas corpus, to be directed to the said J. J. Maney, Sheriff of Jackson County, requiring him to

bring before your Honor the body of your petitioner, with the cause of his imprisonment and restraint, that the same may be inquired into, and relief may be afforded to your petitioner.

Ray Bailey.

(Verified 6-7-32.)

IN SUPERIOR COURT OF JACKSON COUNTY

WRIT OF HABEAS CORPUS

State of North Carolina to the Sheriff of Jackson County, Greetings:

We command you that the body of Ray Bailey, alias Ray Keith, by whatever name he may be called in your [fol. 7] custody detained, as it is said, together with the day and cause of his taking and detention, you have before me, Walter E. Moore, one of the Judges of the Superior Court of North Carolina, at chambers in the town of Sylva, County of Jackson, State of North Carolina, on the 27th day of June, 1932, at 10 o'clock A. M., to do and receive all and singular such things as shall then and there be considered of him in his behalf; and have you then and there this writ.

Witness my hand, this the 7th day of June, 1932.

Walter E. Moore, Judge of 20th Judicial Dist.

I hereby accept service of the within Writ, together with a copy of the same and a copy of the Petition, this 8th of June, 1932.

John J. Maney, Sheriff.

IN SUPERIOR COURT OF JACKSON COUNTY

AFFIDAVIT OF RAY BAILEY

Ray Bailey, being first duly sworn, deposes and says:

That he is 22 years of age, and was born in, and has lived most of his life, in Yancey County, North Carolina; and that he is now in The C. J. Harris Community Hospital,

in the County and State aforesaid, suffering from gunshot wounds which he received as hereinafter stated:

That on Saturday, April 30, 1932, this affiant spent the night with his cousin, Jake Peterson, in Asheville, North Carolina. That, on Sunday morning, May 1st, 1932, he walked up town, and while walking up Broadway, a friend of his from Yancey County, named Howell Wilson, drove up and asked him to go to ride. That he and the said Howell Wilson rode around for a few minutes, and then went out to the home of W. C. Smith, on Brevard Road, to have dinner. That they arrived there about 10 or 10:30 [fol. 8] and stayed until after dinner. That about 1:00 o'clock, he and the said Howell Wilson decided to go fishing that afternoon. That they went up the river and fished for some time, and later in the afternoon, the said Howell Wilson asked this affiant to go up to Chunn's Cove with him and get some whiskey. They went up in that direction and Howell stopped in front of the house, went in and came back with a half gallon of whiskey. I waited in the car while he was gone. We took a drink or two and drove up on Beaverdam to see a friend of mine, named Roy Williams, but when we arrived at his old home, we found that he had moved. Howell and I then drove up on the mountain on the Scenic Highway. We parked our car there and walked out into the woods, where we played poker for an hour or so. Howell had some cards and some chips. I won about $5.00, and Howell seemed to be a little sore.

However, we then decided to go on to Yancey County and spend the night with the folks there. It was just about dark when we left Asheville. Both of us were drinking some and Howell was drinking pretty heavy, and seemed to be in a bad humor. On our way toward Yancey County, we stopped several times, but did not talk to anybody until we stopped at John English's Store and Cafe. We stopped there for cigarettes and coca colas; it must have been about 9:30 or 10 o'clock. When we got there the said John English was in bed, but I knew that he lived in the rear of the store building, so we blew our horn and he got up and let us in. We got some drinks and some cigarettes, and as well as I remember, the bill amount to about 45¢.

One of us suggested that we cut cards, and that the low man lost. Wilson pulled out a deck of cards and I cut a

low card. Wilson then turned up the card which he already had in his hand, and which was an ace of some kind. When [fol. 9] he turned this up we got into an argument and cursed each other some. English then told us that his family lived in the rear of the store building, and asked us to be quiet or leave the building. We then left and started on toward Yancey County. We were about a half mile or three-quarters of a mile from the Madison-Yancey line. We went a few hundred yards and were still arguing. Howell told me that he would show me that he cut the cards right, so he stopped the car and both of us got out. Just after we got out a car came by and stopped. I recognized Mr. Sinclair Connally, a former school teacher of mine, and the present Dean of Biltmore College. Mr. Connally spoke to us and asked me how I was getting along. I told him all right; he then asked me if I had started home; I told him, yes; that I was going to Yancey County. He then said that he wished that I could go to Asheville with him. He did not say anything more, and drove off.

After he left Wilson told me that he would cut the cards again to show me that he had done it right. He cut them again, but had a card in his hand, just the same as he did in the store, and pulled it. I then told him that he was still doing the same thing. He called me a damned liar and said I just hated to be beat. I stepped back and turned to pick up a stick. As I turned back toward him he started shooting. He shot two or three times and I pulled out my gun and shot two or three times at him, until he shot me in the hand. I then dropped my gun and grabbed him. He shot once or twice while we were clinched. He then turned me loose and I fell or sat down on the side of the road. He offered to take me to a hospital, but I told him "Hell, no". He then got in his car and drove off.

A few minutes later a car drove up with two men in it. They stopped and asked me what was the matter. I told [fol. 10] them that I was hurt, and asked them to take me to my brother, who lives the other side of West Asheville. They put me in the car and started with me. They stopped at Grover Robinson's filling station, which is some three or four miles from where the shooting occurred, and got some gas and oil. I knew Grover and he spoke to me

and asked me what was the matter; I told him I was hurt, but not to say anything about it. They carried me on to my brother's home. They then sent for Dr. Gardner, who came over and bandaged some of my wounds. He called an ambulance, and I asked him to send me to a hospital outside of Asheville, in order to avoid publicity, as I did not want to get Howell Wilson into trouble; that we had always been good friends, and I felt like the shooting was due to the fact that we had been drinking and playing poker, rather than any ill will which he felt for me.

They then brought me to the hospital here in Sylva. It was just about daylight when we got here; I have been here ever since. I was not in Greenville, South Carolina, on May 1, 1932, and I have not been there for over a year. I did not get nearer Greenville, South Carolina, on May 1st, 1932, than the City of Asheville, North Carolina.

Ray Bailey.

(Sworn and subscribed to 6-24-32.)

In Superior Court of Jackson County

Return and Answer

To the Honorable Walter E. Moore, Superior Court Judge of the State of North Carolina:

Respondent, John J. Maney, begs leave to return and answer petition for writ of habeas corpus, and alleges as follows:

1. That he admits paragraph 1 of the petition.

2. That he admits paragraph 2 of the petition.

[fol. 11] 3. That respondent denies that the said Ray Bailey, alias Ray Keith, is being illegally imprisoned and restrained, but alleges that he is being legally and lawfully held in custody after having been arrested on a warrant of extradition issued by the Governor of North Carolina on the 9th day of May, 1932, upon requisition for same by the Governor of South Carolina, on and for a charge of murder alleged to have been committed in the State of South Carolina, said warrant of extradition having been duly executed

by me on the said Ray Bailey, alias Ray Keith, on the 7th day of June, 1932.

John J. Maney, Sheriff of Jackson County.

(Sworn and subscribed to 6-27-32.)

In Superior Court of Jackson County

Affidavit of Mrs. Florence Smith

Mrs. Florence Smith, being first duly sworn, deposes and says:

That she is a citizen and resident of Buncombe County, North Carolina, and lives on Brevard Road, about three miles from West Asheville. That she has lived here for a number of years, and that she is well acquainted with Ray Bailey, who lives in Yancey County, North Carolina.

That on Sunday morning, May 1, 1932, at about 10 o'clock, Ray Bailey, in company with Howell Wilson, came to the home of this affiant and that the said Ray Bailey and Howell Wilson stayed at this affiant's home and ate dinner there, leaving about 1 o'clock, stating to this affiant that they were going up on the river fishing. That she did not see the said Ray Bailey and Howell Wilson any more that day, nor has not seen them since that date.

Mrs. Florence Smith.

(Sworn and subscribed to 6-23-32.)

[fol. 12] In Superior Court of Jackson County

Affidavit of Bascom Hoilman and Smith Barnett

State of Tennessee,
Unicoi County:

Personally appeared before me the undersigned a Notary Public in and for said County, Bascom Hoilman and Smith Barnett, who, after being first duly sworn, deposed as follows:

On the night of May 1, 1932, about 10 to 11 o'clock, we were driving in automobile from Erwin, Tennessee, to Asheville, North Carolina, when — were about half a mile from the line between the counties of Yancey and Madison in the State of North Carolina, on the Madison County side, we saw a man lying on the side of the road. We stopped and asked him what was the matter and he said he got hurt and asked us to take him to Asheville to his brother, who lived the other side of West Asheville. We did so. He said his name was Ray Bailey; on the way he told us that he and his friend had fell out and his friend had shot him. He repeatedly told us to tell nobody. He was bleeding. Before we got to where the man was lying on the side of the road, and near the Madison and Yancey line we met a car driven by a man, others might have been in the car, the car was being driven at a high rate of speed, none of us spoke to each other. After we had picked up the wounded man and driven something like about 200 yards, we passed a store where a man was standing in the store door and a light in the store. That was the only person we saw for some distance.

Bascom Hoilman, Smith Barnett.

(Sworn and subscribed to 6-12-32.)

In Superior Court of Jackson County

Affidavit of Grover Robinson

Grover Robinson, being first duly sworn, says:

That he is a citizen and resident of the County of Madi- [fol. 13] son and State of North Carolina, and that he operates a filling station on Highway #69 in Madison County, about four miles from Yancey and Madison County line; that, on May 1, 1932, at about 10:30 or 11 o'clock Sunday night a car drove up going toward Asheville and called for gas and water. I serviced the car. Two men were in front seat whom I did not know. Ray Bailey was lying in back seat, and I asked him what was the matter; he said that he had got hurt and said, "Do not say anything about it to anyone, Grove". I told him I would not. Think-

ing there might be something wrong or foul play on account of strangers being with Ray, I took the license number of the car, which was 310-407 Tenn. '32.

Grover Robinson.

(Sworn and subscribed to 6-15-32.)

In Superior Court of Jackson County

Affidavit of W. C. Smith

W. C. Smith, being first duly sworn, deposes and says:

That he is a citizen and resident of Buncombe County, North Carolina, and lives on Brevard Road, about three miles from West Asheville. That he has lived here for a number of years, and that he is well acquainted with Ray Bailey, who lives in Yancey County, North Carolina.

That on Sunday morning, May 1, 1932, at about 10 o'clock, Ray Bailey, in company with Howell Wilson, came to the home of this affiant; and that the said Ray Bailey and Howell Wilson stayed at this affiant's home and ate dinner there, leaving about 1 o'clock, stating to this affiant that they were going up on the river fishing. That he did not see the said Ray Bailey and Howell Wilson any more [fol. 14] that day, nor has not seen them since that date.

W. C. Smith.

(Sworn and subscribed to 6-23-32.)

In Superior Court of Jackson County

Affidavit of Sinclair B. Conley

Sinclair B. Conley, being duly sworn, says:

That he is a citizen and resident of the County of Yancey and State of North Carolina; that he is Dean of Men and Proffessor in Biltmore College at Asheville, North Carolina; that he has known Ray Bailey all of his life; that, as he was going from his home in Yancey County to Asheville on Sunday night, May 1, 1932, about three-fourths mile

from the Yancey and Madison County line, between 10 and 11 o'clock, he saw Ray Bailey and another man standing in front of a roadster car, headed toward Yancey County; that, when he recognized Ray, he stopped his car and said "Hello, Ray, how are you?"; that Ray said, "I'm O. K."; that he said, "Ray, have you started to Yancey?" that he replied, Yes; that he said, "I wish you could go to Asheville with me"; that Ray Bailey did not answer him, and did not seem inclined to talk and he decided to move on; that he did not see or hear anything more of Ray until the following Thursday morning when he read in the Asheville paper about Ray Bailey being in the hospital at Sylva.

Sinclair B. Conley.

(Sworn and subscribed to 6-16-32.)

I. N. McLean, Physician and Surgeon, Burnsville, N. C.

To whom it may concern:

This is to certify that I have examined Sinclair B. Conley; that he has dysentery; he is unable to leave his bed and may have to be taken to hospital.

[fol. 15] This the 26th day of June, 1932.

I. N. McLean, M. D.

In Superior Court of Jackson County

Affidavit of John English

John English, being duly sworn, says:

That he is a citizen and resident of the County of Madison, and the State of North Carolina, and is engaged in the mercantile and cafe business near Buckner, about one-half mile from Yancey and Madison County line on highway #69;

That, he is personally acquainted with Ray Bailey, and that he has known the said Ray Bailey for more than ten years; that, on Sunday night, May 1, 1932, about 10 o'clock, the said Ray Bailey and Hal Wilson came to this affiant's place and blew their auto horn, this affiant and his family had retired and were asleep; this affiant got up and dressed and opened the door and they came in and called for cigar-

ettes and coca-cola. Ray Bailey suggested they cut the cards and the low man pay for the cigarettes and drinks, and they got into a heated argument over the cut someway, saying it had not been done straight, and began to curse and swear. I told them my wife was in the rear of the building asleep and that I couldn't have any cutting up and asked them to be quiet or leave the building. They left the store and started toward Yancey County. About five minutes after they left I heard a car go by going toward Asheville and in about five minutes later I heard seven or eight shots fired.

I went to the door and saw a car about 200 yards beyond my place start off, and it soon moved out of sight going toward Yancey. In a very short time I saw a car coming down the road and stop where the first car named had pulled out, and pick up a man and put him in their car. They immediately passed my store going toward Asheville. It was a large closed car. I saw nor heard anything more [fol. 16] of Ray Bailey until I heard he was confined in a hospital at Sylva, N. C.

John English.

(Sworn and subscribed to 6-15-32.)

To whom it may concern:

This is to certify that Mr. John English has Flu and is unable to set up.

This June 27th, 1932.

I. N. McLean, M. D. Grover Robinson.

J. R. Moody, M. D., Erwin, Tennessee

June 24, 1932.

To whom it may concern:

This is to certify that I have been called to see and treat Smith Barnett, Unicoi, Tenn., and find him suffering with Acute Sinusitis, and is advised to remain at home.

This respt. submitted.

J. R. Moody, M. D., Erwin, Tenn.

IN SUPERIOR COURT OF JACKSON COUNTY

AFFIDAVIT OF W. L. HYER

Personally appeared before me, John H. Bramlett, a Notary Public in and for the County and State aforesaid, one W. L. Hyer, who being first duly sworn, deposes and says:

That he is a resident of the County and State aforesaid; that he is engaged in business with Clayton & Hyer as Funeral Directors; that deponent lives on Louisiana Avenue; that, on Monday morning, May 2, 1932, about 3 o'clock A. M., a man who gave his name as Keith, and whom deponent later learned to be Vernon Bailey, came to home of deponent, which is in what is known as West Asheville, and stated that his brother had got hurt in a fight at Enka and [fol. 17] was then at his, Keith's or Bailey's, home this side of Enka, and wanted deponent to take his ambulance and carry his brother to a hospital at his home in Sylva, North Carolina;

That, some man came along with Vernon Bailey in a car but deponent did not know him and has not seen him since; that deponent went to the home of Vernon Bailey and carried with him a boy helper, notwithstanding Vernon Bailey had requested that deponent go alone; on arriving at the home Vernon Bailey requested deponent to wait and he went inside and deponent heard talking inside with some woman but could not understand what was said and never did at any time see the woman; that deponent was then called in and Ray Bailey was lying on his back on a bed, seemed to be suffering; he had on a khaki shirt which had much blood on the right side near the belt line; that he had on light colored pants; that he did not have any coat on; the said Ray Bailey had his right thumb tied up; that deponent then carried Ray Bailey to the hospital in Sylva and returned. Vernon Bailey went in separate automobiles.

W. L. Hyer.

(Sworn and subscribed to 6-25-32.)

IN SUPERIOR COURT OF JACKSON COUNTY

AFFIDAVIT OF LAURENCE E. BROWN

Personally appeared before me, J. B. Cain, Clerk of Superior Court for the County and State aforesaid, one Laur-

ence E. Brown, who on being first duly sworn, deposes and says:

That he is a resident of the County and State aforesaid; that he is Sheriff of Buncombe County, State of North Carolina, and was at the time hereinafter referred to; that some time this year, prior to May 1st, one Ray Bailey was ar-
[fol. 18] rested and brought to the Buncombe County jail; that deponent saw the said Ray Bailey at that time and he was wearing a light grey cap; that deponent has been shown a light grey cap alleged to have been worn by Ray Bailey at the time A. B. Hunt, a policeman of Greenville, South Carolina, was killed, and while deponent cannot positively identify the same as was worn by the said Ray Bailey at the time he was locked in the Buncombe County jail, some few months prior to May 1st, this year, the same in general appearance is the same as was worn by him when locked in the jail of Buncombe County, and could be the same cap, but deponent did not look for any particular marks for identification.

L. E. Brown.

(Sworn and subscribed to 6-25-32.)

In Superior Court of Jackson County

Affidavit of John E. Thrash

Personally appeared before me, J. B. Cain, Clerk of Superior Court for the County and State aforesaid, one John E. Thrash, who, being first duly sworn, deposes and says:

That he is a resident of the County and State aforesaid, and is Jailor for said County and State, and has been acting in that capacity for some time; that sometime this year, prior to May 1, and while deponent was Jailor, one Ray Bailey was arrested and brought to the Buncombe County jail; that deponent saw the said Ray Bailey and he was at the time wearing a light grey cap; that deponent has been shown a cap that is alleged to have been worn by Ray Bailey the night that A. B. Hunt, a policeman of Greenville, South Carolina, was killed, and the same looks to be the same in general appearance as the one worn by Bailey when he was

locked in the Buncombe County jail, and could be the same cap, but deponent did not make a close inspection of the cap [fol. 19] at the time and, therefore, would not want to testify positively that said cap is the same, but the same has the same general appearance.

John E. Thrash.

(Sworn and subscribed to 6-25-32.)

In Superior Court of Jackson County

Affidavit of Claude E. Brown

Personally appeared before me, J. B. Cain, Clerk of Superior Court for Buncombe County, North Carolina, one Claude E. Brown, who, being first duly sworn, deposes and says:

That he is a resident of the County and State aforesaid; that deponent was confined in the Buncombe County jail this year when one Ray Bailey was brought in and locked up; that he was at the time wearing one grey, light cap; that deponent has been shown a light grey cap that is alleged to have been worn by Ray Bailey the night that A. B. Hunt was killed in Greenville, S. C., and, while deponent cannot testify positively that the same is the same cap worn by Bailey when he was locked up in the Buncombe County jail, deponent does state that the same has the same general appearance in color and could be the same cap; that, deponent, at no time, looked at Ray Bailey's cap for any particular marks.

Claude E. Brown.

(Sworn and *sbu*scribed to 6-25-32.)

In Superior Court of Jackson County

Statement of Evidence

Appearances

For Petitioner: Dan K. Moore, Esq., Sylva, N. C.; Hon. Clyde Hoey, Shelby, N. C.; Charles Hutchins, Esq., Burnsville, N. C.; G. D. Bailey, Esq., Burnsville, N. C.

[fol. 20] For Respondent: John M. Queen, Solicitor, Waynesville, N. C.; Gilmer Leatherwood, Solicitor, Greenville, N. C.; Doyle D. Alley, Esq., Waynesville, N. C.

Attorney for respondent reads warrant.

Respondent offers in evidence writs and warrant *and warrant* of rendition and extradition papers.

Attorney for Petitioner reads in evidence affidavit of Ray Bailey, the Petitioner.

Attorney for Petitioner reads affidavit of Sinclair B. Conley.

Attorney for Petitioner reads affidavit of John English.

PETITIONER'S EVIDENCE

W. C. SMITH testified for the Petitioner:

Q. Your name is W. C. Smith?

A. Yes.

Q. Where do you live?

A. On the Brevard Road, on the other side of West Asheville.

Q. How far from Asheville?

A. 3 miles.

Q. Do you know Ray Bailey?

A. Yes.

Q. How long have you known him?

A. About 5 yrs.

Q. On Sunday, May 1st, state whether or not he came to your home and if so at what time, and who was with him?

A. He come to my house about 10 o'clock Sunday morning in company with Howell Wilson, and they stayed there and ate dinner around twelve o'clock and left about 1 or 1:30 and said they were going fishing.

Q. Did Bailey say where they were going fishing?

[fol. 21] Respondent objects.

A. He said they were going fishing.

Q. Did they leave your home together?

A. Yes both together.

Q. Do you know Howell Wilson?

A. I know him, but am not personally acquainted with him, have seen him a few times.

Q. But that was his name?

A. Yes.

Q. Was your wife there at home?

A. Yes.

Cross-examination:

Q. You live about 3 miles from West Asheville?

A. Yes.

Q. What is the name of the place?

A. Brevard Rd.

Q. That is in the direction from Hendersonville from W. Asheville?

A. Yes.

Q. How far is Hendersonville from W. Asheville?

A. About 20 miles.

Q. How — is it from Hendersonville to Greenville, S. C.?

A. I certainly don't know.

Q. Have you got any idea?

A. No.

Q. Have you ever been there?

A. I reckon I have been there twice in my life.

Q. You can drive it from West Asheville in an hour and a half or two hours, can't you?

A. I guess so.

Q. After they left your place at 1 o'clock, after they had lunch with you, you don't know where they went?

A. No, that is the last I saw of them.

Redirect examination:

Q. Did Mr. Bailey say anything about making a trip to Yancey County to collect for a gun?

Respondent objects.

A. Yes.

Q. What did he say about that?

[fol. 22] A. He said a fellow owed him some money in Yancey County and he might go to Yancey County before he come back to my house.

Q. Did he say what he owed it to him for?

A. He said he owed him $10 in a pistol swap.

Recross-examination:

Q. How come them to come to your home on Sunday when you just casually knew him?

A. Ray Bailey had been staying at my house a right smart bit and he come there with him.

Q. Are you akin to Ray?

A. No, but I guess he felt like he was at home.

Q. He lives in Yancey County?

A. Yes.

Q. And you live in West Asheville?

A. Yes.

Q. About how far from Ray's home do you live?

A. I guess 30 or 40 miles.

Q. And in the last few months he had been at your house many times?

A. Yes.

Q. And he ate a good deal there?

A. Yes.

Q. He was boarding there?

A. He did about it for the last month.

Q. And paid you board?

A. Yes.

Q. And when he got shot you don't know why he didn't come to your house?

A. No. I didn't know he was shot.

Q. You are his friend?

A. Yes, I like him, I have never found anything against him.

Q. Who was with him?

A. Howell Wilson.

Q. That was the first time Wilson had been to your house?

A. Yes.

Q. What kind of looking man was he?

A. A low fellow and he was crippled and walked on crutches.

[fol. 23] Q. Is he here?

A. I don't see him.

Q. Have you seen him since then?

A. No.

Q. What kind of car was he driving when he and this fellow left your house?

A. A Ford roadster, a '28 or '29, a grey looking Ford roadster.

Q. How soon after he left your home did you learn he was shot?

A. I didn't learn it until about Wednesday of that same week.

Mrs. W. C. SMITH testified as follows:

Q. You are the wife of W. C. Smith, who was just on the stand?

A. Yes.

Q. Do you recall Ray Bailey and Howell Wilson being at your home on May 1st?

A. Yes.

Q. About what time did they come?

A. About ten o'clock.

Q. And ate dinner?

A. Yes, and about 1 o'clock they went away.

Q. Do you know what Bailey said as to where he was going?

A. He said they were going fishing up the river.

Q. Did you hear him say anything about going to Yancey County?

A. Yes, I asked him if he was coming back for the night and he said no, he might not, that he thought he would go to Yancey County and collect some money that was owing him.

Cross-examination:

Q. What river did he speak about when he said he was going fishing?

A. He didn't mention any but I imagine it was French Broad.

Q. Is this Ray Bailey in this chair?

A. Yes.

[fol. 24] Q. How long have you known him?

A. 4 or 5 yrs.

Q. Has he been boarding at your house?

A. Yes.

Q. How long?

A. He has been staying there a right smart little bit.

Q. What did he do, what was his occupation?

A. He just drove around.

Q. And he had no job?

A. Not particular that I know of.

Q. Did he in particular?

A. I didn't know if he was at work, I didn't butt in his business.

Q. He was at your place off and on for a month before this?

A. Yes.

Q. And would be there at meals?

A. Yes.

Q. And he paid you some board?

A. Yes.

Q. Did you run a boarding house?

A. No.

Q. Did you ever know him before this, before he got to staying at your house?

A. Yes.

Q. You are no akin to him?

A. No.

Q. When was the first time he come to your house?

A. 4 or 5 years ago.

Q. Did you live in the same place?

A. Yes.

Q. Did you notice the car when it drove off?

A. Yes, it was a Ford roadster.

Q. What color?

A. Light grey.

Q. Did it have curtains?

A. No, the curtains were down.

Q. Did you see the tag on it?

A. I didn't notice it.

Q. Didn't you ask him where he got those Indiana tags?

A. No.

Q. He told you he was going fishing about 1 o'clock on Sunday?

A. Yes.

[fol. 25] Q. He was going up the river, and you live on the river?

A. Yes.

Q. And up French Broad would put you in the direction of Greenville, South Carolina?

A. Toward Hendersonville.
Q. You go toward Hendersonville to go to Greenville?
A. Yes.

WILLIAM ED MCCALL testified as follows:

Q. Where do you live?
A. On the Brevard Road, 2 miles from West Asheville.
Q. Do you know W. C. Smith, who was on the stand a while ago?
A. Yes.
Q. Do you know his wife?
A. Yes.
Q. How long have you known them?
A. About 21 years.
Q. How far do you live from them?
A. From three-quarters of a mile to three miles, I believe.
Q. All of these 21 years?
A. Yes, they have lived at different places and I have moved once.
Q. Do you know W. C. Smith's general character?
A. Yes.
Q. What is it?
A. Good.
Q. Do you know Mrs. Smith's general character?
A. Yes.
Q. What is it?
A. Good.
Q. I believe you are the nominee for a County office in Buncombe County, for Register of Deeds?
A. Yes.

BASCOM HOILMAN testified as follows:

Q. Where do you live?
A. In Johnson City, Tenn.
Q. Where were you on the night of Sunday, May *1st*?
A. I left Erwin about 8 o'clock.
Q. Who was with you?
[fol. 26] A. Smith Barnett.

Q. How were you traveling?
A. In a Hudson automobile.
Q. Where were you going?
A. Coming to Asheville.
Q. You say you left Erwin about eight o'clock?
A. Yes.
Q. Enroute to Asheville, where, if any place, did you see Ray Bailey?
A. About a half mile or three-quarters of a mile beyond the Madison County line on top of the mountain.
Q. In Madision County?
A. Yes.
Q. Where was he?
A. Laying off on the left of the road.
Q. Did you know him at that time?
A. No.
Q. What happened as you come along, when you saw him?
A. We saw him laying there and Mr. Barnett said, "There lays some fellow, let's see what is the matter with him," and we stopped and the fellow lay there and we asked him what was the matter and he said he had got hurt and asked us if we would bring him to Asheville to his brother's two or three miles West of Asheville, and we got him in the car and come on three or four miles from where we picked him up and stopped at a filling station and got some gasoline.
Q. Did you know the name of this man at the filling station?
A. No.
Q. Did that man at the filling station speak to Bailey?
A. Yes.
Q. You got some gas at that place?
A. Yes.
Q. That was something like three or four miles from where you picked him up?
A. Yes.
[fol. 27] Q. What did you do then?
A. We come to Asheville and took him to his brother's, so he said, in West Asheville.
Q. Did you ask him anything about how he got hurt?
A. He told us that him and his friend fell out and he shot him.

Q. Then when you brought him to West Asheville—first, about what time was it when you found him?
A. Around 10 or 11 o'clock, I suppose.
Q. Somewhere from 11 to 10?
A. Yes.
Q. And you brought him on to West Asheville?
A. Yes.
Q. That was a distance of about how far from Asheville?
A. I couldn't say, but it was in Madison County.
Q. You had never seen this boy before?
A. No.
Q. Where is Mr. Barnett, who was with you?
A. He is at home.
Q. In Tennessee?
A. Yes.
Q. Do you know whether he is sick or well?
A. He is sick.
Q. You have no interest in this matter?
A. No.
Q. Did you see him any more after you delivered him to his brother's?
A. No.

Cross-examination:

Q. What did he tell you his name was when you picked him up?
A. Ray Bailey.
Q. You don't know why he would tell it was Ray Keith, at some other place, at the hospital?
A. No.
Q. You have never seen him before?
A. No.
[fol. 28] Q. And you didn't know his people?
A. No.
Q. Who did you first tell this to?
A. Ike Riddle, from Unacoi County, Tenn.
Q. Where is Riddle?
A. He is here.
Q. When did you tell that to him?
A. Sometime after I returned back home.
Q. How come you to tell Riddle about it?
A. I just told him about it, about us picking up a fellow that was shot.

Q. When did you first find out he was in the Sylva Hospital?

A. I don't know.

Q. Who come to see you about it?

A. Mr. Clyde Bailey.

Q. When did he go to see you about this?

A. A couple of weeks ago.

Q. He is a brother to Ray?

A. I suppose so.

Q. He went to see you about a couple of weeks ago?

A. Something like that.

Q. You don't know where this boy was, whether he was in Greenville, or not?

A. That boy wasn't in Greenville, I don't know when he had been there.

Q. He said he hadn't been there in a year, you don't know about that?

A. No.

Q. What highway did you find him on, No. 20?

A. 1923, I believe it was.

Q. You are talking about the model of an automobile now, aren't you?

A. No, there is a 19 and a 23, there are two numbers.

Q. Which way did you come into Asheville?

A. In the other side.

Q. Did you cross Roane Mountain?

A. No, we come across Spivey and across Ivy Mountain.

[fol. 29] Q. Did you come by Mars Hill and Weaverville?

A. I don't think so.

Q. How did you get into Asheville?

A. From Erwin across Spivey and hit the Asheville road over on Cane River, I believe, and turned to the right and come across Ivy Mt., and on into Asheville.

Q. Did you come up No. 20, up French Broad by Marshall?

A. No.

Q. And Hot Springs?

A. No.

Q. Didn't you come into No. 20 between Asheville and Hot Springs, isn't that the way you got into Asheville?

A. No.

Q. You didn't come by Weaverville nor by Mars Hill?

A. I don't remember.

Q. Can you tell His Honor how you got into Asheville and West Asheville?

A. I didn't know the road very well.

Q. Had you ever been to Asheville before?

A. Yes.

Q. Where had you started?

A. To Asheville.

Q. What for?

A. Mr. Barnett was coming over to trade automobiles.

Q. When did you go back?

A. The next day.

Q. Did you trade automobiles?

A. No, he didn't trade.

Q. What is Barnett's name and address?

A. Unicoi, Tenn., Smith Barnett.

Q. I will ask you if the automobile Ray Bailey was in that night isn't now over there in Tennessee near your place?

A. Not that I know of.

Q. You know nothing about it?

A. No.

[fol. 30] Q. And heard nothing about it?

A. No.

Q. Where did you stay all that night in West Asheville?

A. In a rooming house.

Q. Where?

A. I don't remember the name of the place.

Q. How did you find the rooming house?

A. How would anyone find it.

Q. Do you know the street it was on? Who directed you to this rooming house in Asheville?

A. We stopped on the street and saw the sign up.

Q. What is the name of it?

A. I don't remember the name.

Q. You couldn't go back to it?

A. I guess I could.

Q. Would you mind telling us the name of the St.?

A. It was Walnut St., I believe.

Q. Do you know the name of the house?

A. No.

Q. Did you register there?

A. Yes.

Q. And you believe it was Walnut St.?

A. Yes.

Q. Who did you see at the house of Ray Bailey's brother?

A. His brother was there and some ladies.

Q. How many ladies?

A. Two is all I saw.

Q. They come out?

A. Yes.

Q. It was about midnight then?

A. Yes.

Q. How long did you stay there?

A. I never stayed only a few minutes to help get him in the house.

Q. Whereabouts in W. Asheville is this place?

A. I don't know exactly where it is.

Q. How did you get there, what road did you get on to get there, to Bailey's brother's?

[fol. 31] A. It was on the Brevard Road, I believe.

Q. That is the same road these witnesses talked about that was put up before you, the Brevard Road is the one Mr. Smith talked about, that is where you took him?

A. Yes.

Q. What kind of house is it and which side of the road going east?

A. The left side.

Q. Ray told you where his brother lived?

A. Yes.

Q. What size house was it?

A. I don't know, it was a pretty good size building.

Q. What was the color of the house?

A. I don't know that, it was a white house.

Q. It was a framed house?

A. Yes, it was a framed house.

Q. And a white house?

A. I believe it was, the best I remember.

Q. And on the Brevard Road?

A. It was dark and I didn't pay any attention to the road.

Q. How long did you stay there?

A. Only a few minutes.

Q. Did you stay until after the ambulance come *come*?

A. No.

Q. Did you take him in the house?
A. Yes.
Q. Where did you put him?
A. Laid him on the bed.
Q. What kind of clothes did Bailey have on?
A. Dark grey looking suit and he was bareheaded.
Q. He had no cap at all?
A. I never saw any.
Q. And when you picked him up it was about 11 o'clock on Sunday night, May 1st?
A. Ten to eleven o'clock.
Q. You found him about how many miles from Asheville?
[fol. 32] A. I don't know how far it is; it is about 25 or 30 miles.
Q. He was in his shirt sleeves?
A. No.
Q. He had on a gray suit?
A. Yes.
Q. And a gray coat?
A. Yes.
Q. And was bareheaded?
A. Yes.
Q. And it was about 11 o'clock at night?
A. Yes.
Q. And you don't know how he got there except what he told you?
A. No.
Q. Have you ever been to see him in the hospital since then?
A. No.
Q. Where is the man you hauled?
A. Here he sits (indicating petitioner).
Q. Is that the same suit he had on?
A. It looks pretty much like the same suit, it is about the same color.
Q. You are absolutely certain about that being the man you picked up?
A. Yes.
Q. There is no doubt about it?
A. No.
Q. You had never seen him before?
A. No.
Q. And have never seen him since until today?
A. No.

Q. And it was dark where you picked him up?
A. It was dark.
Q. And it was dark where you let him out at his brother's?
A. Yes.
Q. Did you mean Eastern or Central time?
A. Central.
Q. Which would have made it 10 around your time?
A. It was around 10 or 11 by our time.
Q. Which is Central time?
A. Yes.
Q. Do you know Clarence Alder?
A. No.

[fol. 33] Arthur Blevins testified as follows:

Q. Are you a Deputy Sheriff?
A. Yes.
Q. Where do you live?
A. At Unicoi, Tenn.
Q. Did you ever live in N. C.?
A. Yes.
Q. What County?
A. Mitchell County.
Q. Were you Deputy Sheriff over there?
A. Yes.
Q. How long have you been Deputy Sheriff in N. C. and Tenn.?
A. About 3 years.
Q. Do you know the witness that was just on the stand?
A. Yes.
Q. How long have you known him?
A. About five years.
Q. Do you know his general character?
A. I think I do.
Q. What is it?
A. Good.

(Attorney for Petitioner reads affidavit of Smith Barnett.)

Grover Robinson testified as follows:

Q. Where do you live?
A. In Madison County.

Q. About how near to the Yancey-Madison line?

A. About four miles.

Q. Did you, or not, on the 1st day of May, 1932, see Ray Bailey?

A. Yes.

Q. Go ahead and tell the Court under what circumstances you saw him?

A. He drove to my place about 10:30 or 11 o'clock, I kept it open at night, and they wanted some gas and they were driving a sedan and Ray was lying in the back seat and I gave them five gallons of gas, and I said, "Who is you- friend?", and he said, "I don't know", and Ray said, "Is that you Grover?", and I said, Yes, and he said, "I [fol. 34] am hurt, but don't say anything about it".

Q. Can you fix the time in the night?

A. Yes.

Q. What time did you say it was?

A. Around 11 o'clock; I didn't have a watch right there then and didn't look at a watch.

Q. Was that Sunday night?

A. Yes, May 1st.

Q. What, if anything, did you say to Ray Bailey at that time?

A. I didn't say anything; he said he was hurt but not to say anything about it.

Q. Did you or not at that time take the license number of his license tag?

A. Yes, I did.

Q. Why did you do that?

A. I don't know; I just got the number; I do that every once in a while.

Q. Did you know the man driving?

A. No.

Q. State whether or not that was a Tennessee car?

A. Yes.

Cross-examination:

Q. Your name is Grover Robinson?

A. Yes.

Q. You run a filling station in Madison County?

A. Yes.

Q. And Ray Bailey and two men come by your place at 10:30 or 11 o'clock and got 5 gallons of gas?

A. Yes.

Q. And you say you got the license number; what was it?

A. #31047.

Q. That was a Tennessee tag?

A. Yes.

Q. And that car belonged to the boys that picked up Ray Bailey?

A. Yes.

Q. You don't mean to say it was Bailey's car?

A. No, I don't know who it belonged to.

Q. You heard the fellow say they were coming from Erwin and picked up a wounded man?

A. Yes.

Q. And you heard him say they left Erwin about 8 o'clock [fol. 35] and picked up Ray Bailey near the Madison County line?

A. Yes.

Q. That is the car you took the number of, the car the Tennessee men were driving?

A. Yes.

Q. How far do you live from Asheville?

A. 23 miles.

Q. How far from Greenville?

A. About 85 miles.

Q. How long would it take a man to drive from Greenville to the place where this man said he picked up the defendant?

A. About three hours and a half good driving.

Q. You knew Ray Bailey?

A. Yes.

Q. And have known him for some time?

A. A couple of years, I have been running a filling station.

Q. He hangs out around your place a good deal.

A. No.

Q. I will ask you if he hasn't hung out there and if the officers of Madison County haven't searched your place?

A. No.

Q. I will ask you if the officers didn't search your place for liquor?

A. Not when I operated it; I sold the place out a couple of times and got it back. It has been searched but they didn't find anything.

Q. Why did you take the number of this boy's car?

A. Why do I take the number of any car?

Q. Why did you take the number of this car?

A. I take the number of lots of cars.

Q. Why did you take the number of this one?

A. Ray was lying in the back of the car and he said, "Don't say anything about it", and I just got the number.

Q. And right at that time when he told you he was hurt he said not to say anything about it?

[fol. 36] A. Yes.

Q. And you took it in because you saw he was in a Tennessee car and coming from Tennessee?

A. No.

Q. Why didn't you report it to the officers?

A. He said he was hurt and not to say anything about it.

Q. Who did you first tell this to?

A. To A. J. Duckworth.

Q. Did you tell the Sheriff of Madison County about it?

A. No.

Q. When did you tell Duckworth?

A. The next morning.

Q. This other man bought the gas?

A. Yes.

Q. And paid you for it?

A. Yes.

Q. And you took the number of his car at 11 o'clock?

A. Ray said, "Is that you Grover?" and I said "Yes, what is the matter?" And he said, "I am hurt", and he said, "Don't say anything about it."

Q. The first thing you said was, "Who is your friend?"

A. Yes, and they said, "I don't know"; and I put in the gas and Ray spoke to me.

Q. And you took the number of the car so if you were called on you could give it?

A. I take the numbers of lots of cars.

Q. Why did you ask them who their friend was?

A. That is the way I talk to them.

Q. Isn't it very frequently that Tennessee cars pass your place? A. Yes.

Q. What other car number did you take that day or night?

A. I don't know.

[fol. 37] Q. Give me one other that you took on that Sunday, give me the number and the man driving it, Tennessee, North Carolina, Alabama, or any other State?

(No answer.)

STEVE DEAVER testified as follows:

Q. Where do you live?
A. At Ivy, in Madison County.
Q. How long have you lived there?
A. About thirty years.
Q. Do you know Grover Robinson?
A. Yes.
Q. How long have you known him?
A. About 6 or 8 or 10 years.
Q. Do you know his general reputation in that community?
A. It is good as far as I know.
Q. Do you know it?
A. I think so.
Q. What is it?
A. Good.

Cross-examination:

Q. I will ask you if he hasn't the general reputation in that community of being a man who violates the Prohibition Law in keeping a filling station open as a bootlegging joint?
A. Not that I know of.
Q. I will ask you if you haven't heard it?
A. Not that I have heard of.
Q. You don't drink liquor yourself?
A. Not to amount to anything.
Q. How far does he live from you?
A. About three miles.
Q. You have known of the Sheriff searching his place?
A. No, I have not.
Q. You didn't see him on this Sunday? A. No.
Q. And you didn't see Ray Bailey? A. No.

Redirect examination:

[fol. 38] Q. Do you know John English?
A. Yes.
Q. Do you know his general reputation?
A. Yes, it is good.

Dr. A. S. Nichols testified as follows:

Q. Are you a practicing physician?
A. Yes.
Q. How long have you been practicing medicine?
A. Thirty years.

(It is admitted that the Doctor is an expert.)

Q. Are you connected with the hospital here in Sylva?
A. Yes.
Q. Was Ray Bailey brought to your hospital on the morning of May 2nd?
A. I was thinking it was May 1st.
Q. He was brought there on Monday morning?
A. Yes.
Q. Did you examine him after he come to the hospital?
A. Yes.
Q. State to His Honor what you found with reference to wounds on his body?
A. He had three, perhaps five, gunshot wounds, evidently three; one wound was right to the left of the liver, it went through, and another went through the lower border of the liver, and one through the thumb, and we couldn't figure out as to whether it was one or two; one shot in the back perhaps caused a couple of blisters on his back, but he had really 3 gunshot wounds.
Q. The one across the back, that didn't enter but rather glanced?
A. No, that was questionable; we didn't pay any attention to that for it didn't amount to anything.
Q. What was the nature of these injuries with reference [fol. 39] to whether or not they were serious?
A. Two were very serious, either one was calculated to kill you, either one of the two that penetrated his body.
Q. Did you acquaint Ray Bailey with his condition?
A. Yes.

Q. And that he was likely to die?

A. Yes.

Q. Did you ask him, or did you hear him say anything about how he got shot?

A. Yes.

Q. What did he say?

(Respondent objects.)

A. He said he had been shot by one of his best friends.

Q. Did you, in the course of your examination and treatment of him, give him ether and put him to sleep?

A. Yes.

Q. Who was present besides yourself?

A. Dr. Candler and my brother and Miss Hendrix, the nurse, four of us.

Q. Who administered the anæsthetic?

A. I gave him the anæsthetic.

Q. Did you and the other physicians and parties present have any discussion as to whether or not you would find out how this happened and how he got shot?

Respondent objects; overruled.

Q. In view of the discussion you had what did you do while you were giving him ether, did you give it to him continuously or suspend it for a little while?

A. Well, after I had started him under the anæsthetic——

Respondent objects.

Q. Did you administer the anæsthetic?

A. I did.

Q. While you were administering it did you suspend it [fol. 40] for a while?

A. I did.

Q. And for what purpose?

Respondent objects; overruled.

A. Just as he was going under the anæsthetic—we had previous to this asked him a number of questions; we had tried the drawing out process to find the cause of this trouble, how it happened, so just as he was going to sleep he began to talk and my brother, Dr. A. A., and Dr. Candler were scrubbing, preparing to operate on this fellow,

and Dr. Candler come in and said, "Big Dock, hold up and we will get the gist of this thing, how the trouble came about," and I said "All right".

Respondent objects.

And he commenced talking and Dr. Candler was standing by the side of the operating table and the boy said, "It is just 45 cents difference, just let it go." So he said something else you couldn't get and we let him drift and Dr. Candler said "Let him drift and we will get it all." So he finally said, "I have played you with chips and played you with money and I beat you fair," and about that time Dr. Candler said "That is enough, it was a poker game."

Q. Did he mention about cutting the cards?

A. That is the last thing I recall, for Dr. Candler diverted my mind.

Q. He said, "I have played you with chips and played fair?"

A. He said, "I have played you with chips and played you with money and I beat you fair."

Q. I want to ask you from your long experience in practicing medicine and from your knowledge of the authori-[fol. 41] ties, if it is a fact that a man going under ether will recite the things exactly as they occur?

A. Yes, most commonly they do.

Q. And that was the reason you were slowing up on that to let him tell how it happened?

A. Yes, it hadn't occurred to me until Dr. Candler suggested it.

Q. He had told you about being shot by his best friend before he went under ether at all?

A. Yes.

Q. Did he tell you where it was?

A. Yes, he said he was shot in Madison County.

Q. And when he went under the ether was the time he told you about the card-playing for money and playing fair?

A. Yes.

Cross-examination:

Q. He said nothing about cards, he said, "I have played you with chips and with money and played fair."

A. That is all he said.

Q. You had tried for 30 minutes to get him to tell how it happened?

A. We had tried for an hour and he just absolutely wouldn't talk.

Q. And he was absolutely conscious?

A. Yes, his mind was clear as the noon day sun.

Q. And when he started under the ether he became unconscious?

A. Yes, subconscious.

Q. He was kind of out of his head?

A. Yes.

Q. He talked sort of frenzy, as the old women say?

A. Yes.

Q. I will ask you if when you give a fellow dope—and he was under a dope?

A. He was under ether, it is not like dope.

Q. When he first came in you injected morphine into him, didn't you?

A. Yes.

Q. Then you put him under ether?

A. Yes.

[fol. 42] Q. And sometimes when a person is under ether he will talk of things very foreign to the issue, isn't that true?

A. Yes.

Q. And you can go into any sick room, and it is something you know, they will sometimes talk of things that have never been thought of?

A. Yes.

Q. And lots of times a fellow will get in a frenzy and think his mother or daddy is trying to kill him?

A. It is a little different from that.

Q. Now, Doctor, I believe you are the one that Dr. Gardner called from Asheville?

A. Yes.

Q. And he said he was sending you a wounded man and for you to meet him up on the mountains?

A. Yes.

Q. What time in the night was that?

A. About 3:30 in the morning.

Q. And you asked him about how he was wounded and he said gunshots?

A. Yes.

Q. And you went to North Fork to meet him?

A. Yes, I waited about thirty minutes and left home about four o'clock and drove up to the flume and parked and waited until about daylight; I don't remember just what time it was, I didn't pay any attention to that, and they told me they would be there with him in an hour, and I waited and I thought from the time they first called me it had been an hour and a half, and I had waited thirty or forty minutes before I got up and dressed.

Q. They didn't come and you come back?

A. Yes, I had just got in the house and the night nurse called me and asked me if I was looking for a patient.

[fol. 43] Q. Who is the night nurse?

A. Miss Baker.

Q. Is she here now?

A. Yes, she is here.

Q. And you come and examined him and called your brother?

A. Yes, I first called Dr. A. A. and then called Dr. Candler and they both come.

Q. Who was with Ray when he come to the hospital?

A. I presumed it was his brother, I don't know, and the fellow who brought him in the ambulance.

Q. What did Ray tell you his name was?

A. Ray Keith, I believe.

Q. What did the boy that was with him that said he was his brother tell you his name was?

A. I don't recall, but it was Keith.

Q. He told you he had been shot in Madison County by his best friend and didn't tell you how it happened?

A. No.

Q. He didn't tell you his best friend offered to take him to a hospital and he said "Hell, no"?

A. No.

Q. And he didn't say his best friend pitched him out by the road?

A. No.

Q. Has his best frie-d been to see him in the hospital that you know about?

A. I don't know.

Q. Has he ever to this day told you who his best friend was that shot him?

A. No.

Q. He didn't even do that after this proceeding was started, did he?

A. No.

Q. Today is the first you have heard about who that best friend was?

A. Yes.

Q. You say he was shot in the right thumb?

A. Yes, about the joint.

[fol. 44] Q. Is there a little bruise over on his hand?

A. Yes, posterior, back this way.

Q. And from this side?

A. Yes.

Q. Did it injure the bone?

A. Perhaps so, it bruised the bone evidently.

Q. Now, he was shot twice in front; you say down here and up about the liver?

A. Yes.

Q. And two wounds in the back was what you would call burns or glancing licks?

A. Yes.

Q. That was blisters?

A. Yes.

Q. And one was higher than the other?

A. Yes.

Q. And those blisters had bursted when they got him to the hospital?

A. I don't know whether they had or not. He had a temporary dressing on that; I don't remember whether they had bursted or not, I would not be positive about that. In fact we didn't observe that very closely for they were very insignificant as compared with the other wounds.

Q. Somebody had given him first aid in the back?

A. Yes, he had these other wounds dressed.

Q. Doctor, who undressed him for the operation?

A. Miss Baker, I believe.

Q. Do you know what became of his clothes?

A. No.

Q. How long was it after he was undressed until his clothes disappeared?

A. I ordered the orderly and Miss Baker to undress him; first, I told her to give him a hypodermic to ease him, he seemed to be suffering, and told them to prepare him for the x-ray room. I didn't pay any attention and don't recall anything about what became of his clothes, but she undressed him and put a gown on him and I called my brother and the next time I saw him after she gave him the hypodermic was in the x-ray room; I don't know anything about [fol. 45] his clothes except what they told me, I never thought about it.

Q. Was he wrapped up when he come into the hospital?

A. He come in an ambulance and used the usual covers to keep him warm and comfortable?

Q. Could you tell if he was drinking?

A. No, if he had had a drop I couldn't smell it; he didn't act like his mind was perfectly clear.

Q. Did Dr. Gardner come over after that to see him?

A. He come over the next day and saw him.

Q. The brother that brought him. Do you know which one that was?

A. No.

Q. What did this one that was with him say about getting away, going back even before you operated?

A. I don't recall now.

Q. But you didn't let him leave until the operation was over, you told him to stay?

A. Sure. I don't remember now what he said exactly; he talked to us very freely about the boy.

Q. Did he tell you there in the presence of Ray that two men brought him to his house and they went off to get a Doctor and he had left with him before they got back?

A. No, he said they brought him to his house that night in this condition and he took him to Dr. Gardner and Dr. Gardner examined him and he said, "This fellow will have to go to a hospital". He said, "This boy is badly injured, you are going to have to get him to a hospital", but he said, "We don't want him in a hospital here". He said so and so down in Madison County, one of the boy's friends, had shot him and that they wanted to get him away from there and that he said to Dr. Gardner, "What can you do?" And [fol. 46] Dr. Gardner said, "I can send him to Sylva or to Franklin and perhaps nobody will know anything about him", and that was his excuse for bringing him over here.

Q. The man that brought him over here got him at Dr. Gardner's?

A. Yes, I asked the fellow that brought him over here how it happened and he said, "You know as much about it as I do", and he said "They called me and I come and got him and put him in the ambulance, Dr. Gardner called me to come and get him."

Q. He said they found him at Gardner's?

A. Yes.

Q. And that was his brother that said he went and got him?

A. Yes, I asked him how it happened and he said the only thing he knew was what the boy had told him, that it happened in Madison County.

Redirect examination:

Q. Doctor, the dose of morphine you gave him was to relieve his suffering, wasn't it?

A. That is all.

Q. It was nothing to derange his mind?

A. No.

Dr. A. A. Nichols testified as follows:

Q. Doctor, were you present the night or morning when this boy, Ray Bailey, was brought to the hospital?

A. Yes.

Q. State if he was seriously injured?

A. Yes.

Q. After he was acquainted with the seriousness of his injury and the probability he would die, did he say anything about who shot him?

A. He didn't say who shot him but he said his best friend shot him.

[fol. 47] Q. Did he tell you where it was?

A. I don't recall that he did.

Q. Were you present when the ether was administered?

A. Yes.

Q. What did he say after he got partially under the ether?

A. He said something about some money and something about some chips and Dr. Candler said "Just ease up a little and we may get some idea about how he got hurt".

Q. And then when he let up on the *chter* he was still talking and that is when he made the remarks about the poker chips and about the mo*eny*?

A. Yes.

Q. And about playing fair?

A. Yes.

Q. Did you hear anything said about cutting the cards?

A. No.

Q. From your experience in the administering of an anæsthetic state whether or not when an anæsthetic is administered people will ordinarily recite the details if there had been a fight or a difficulty?

A. Well, possibly sometimes they might discuss it and have something on their mind and sometimes they might talk about something different.

Q. The purpose in holding up on it was to let him tell about it if he would?

A. Yes.

Q. And when you held up he did tell about it?

A. He made those remarks.

Q. I will ask you if he didn't go far enough that caused Dr. Candler to say, "That is enough?"

Respondent objects.

Cross-examination:

Q. The bullets that entered from the front are still in the cushions (?) of the back, you didn't take them out?

A. No.

[fol. 48] Q. He was shot through the thumb?

A. Yes, at the base of the thumb.

Q. This anæsthetic that Mr. Hoey talks about, as you have told him, this boy might be talking about something foreign to the issue?

A. I think it is possible.

Q. He was just as likely to be as not?

A. I wouldn't say about that, for I haven't had experience enough to observe.

Q. Did you see his clothes?

A. No.

Q. He had refused to tell you anything about it until after you put him on the table?

A. Yes.

Q. And he was absolutely sane and conscious and after you got to administering the anæsthetic his mind got to roaming?

A. Yes.

Q. And there was nothing special about the fact that he began to talk?

A. No.

Q. And what Dr. A. S. Nichols said that is all he said?

A. Yes.

FRED PROFFITT testified as follows:

Q. Your name is Fred Proffitt?

A. Yes.

Q. Where do you live?

A. At Burnsville.

Q. What official position do you hold in Yancey County?

A. Clerk Superior Court.

Q. Do you know Ray Bailey?

A. Yes.

Q. How long have you known him?

A. I have never known him very well, I have just seen him and know his family.

Q. Do you know his general character in Yancey County?

A. Yes.

Q. What is it?

A. It is good.

Cross-examination:

Q. You don't know where he was on Sunday, May 1st?

A. No.

Q. He wasn't in Yancey County that you know anything [fol. 49] about?

A. No.

Q. And in the last year or two he has been running around a good deal?

A. Yes, I can't say I have known much about him for the last year or two.

Q. Up to that time you say his character was good and since then you don't know anything about him, do you?

A. No.

E. M. Banks testified as follows:

Q. I believe you are Asst. Postmaster at Burnsville.
A. Yes.
Q. Do you know Ray Bailey, the defendant?
A. Yes.
Q. How long have you known him?
A. All his life.
Q. Do you know his general character over in Yancey County?
A. Yes.
Q. What is it?
A. Good.

Cross-examination:

Q. He hasn't been there much for two or three years, has he?
A. I haven't seen much of Ray for the last year or two.
Q. He has been off so far as you know and you don't know where he has been nor what he has been doing?
A. No.

J. M. Lyon testified as follows:

Q. I believe you live at Burnsville?
A. Yes.
Q. And our representative of Yancey County?
A. So said.
Q. And I believe you are Cashier of the Citizens Bank for 25 years?
A. Yes.
Q. Do you know the defendant, Ray Bailey?
A. Yes.
[fol. 50] Q. Do you know his general character?
A. I do.
Q. What is it?
A. It is good.

Cross-examination:

Q. You haven't known much about him for the last year or so, have you?
A. I will say for the past year I don't.

Q. He has been out and gone and you don't know where he has been nor what he has been doing?
A. I can't say that I do.

S. L. Hensley testified as follows:

Q. I believe you live on Jack's Creek, in Yancey County?
A. Yes.
Q. Near the residence of Ray Bailey's father?
A. Yes.
Q. How close do you live to him?
A. One mile of him.
Q. I believe you have known him all of his life.
A. Yes.
Q. Tell His Honor what his general character is, if you know.
A. Good.

Cross-examination:

Q. You say his character is good; have you seen him for the last year or two?
A. No, I haven't seen him very many times.
Q. For the last year or two you don't know what his character is?
A. No, I don't.
Q. Had you heard anything about what he said about gambling and liquor drinking?
A. No.
Q. You don't know anything about that except what he says in his affidavit?
A. No.
Q. And you don't know anything about him for the last [fol. 51] year or two?
A. About the last year.
Q. You can't say what his character is for the last year for he hasn't been around there?
A. No, I don't know it the last year.

Bob Williams testified as follows:

Q. I believe you live in the City of Asheville.
A. Yes.

Q. What is your business over there?

A. I work for the Carolina Power & Light Co., operate a street car.

Q. How long have you been in that business?

A. 37 years last March.

Q. Do you know the defendant, Ray Bailey?

A. Yes.

Q. How long have you known him?

A. Five or six years.

Q. Do you know his general character?

A. Yes.

Q. What is it?

A. Good.

Cross-examination:

Q. You live in Asheville?

A. Yes.

Q. What is your run on the street car?

A. From Grace to Biltmore.

Q. What hours are you on duty?

A. From 5:50 in the morning until 2:45.

Q. How far is that from Ray Bailey's home in Yancey County where he was raised?

A. I don't know.

Q. You know how far it is from Yancey County to Asheville, don't you?

A. I have been in Asheville but have not been there.

Q. Where did you ever see Ray Bailey?

A. He went to school at Biltmore High School and rode the car.

Q. When did he leave Biltmore High School?

A. I couldn't say for sure, I think he was there part of the session last year or the year before.

[fol. 52] Q. Have you seen anything of him much in the last year except just in passing?

A. Not much, only I have seen him in Asheville.

Q. You haven't heard about what he said in his affidavit about drinking and gambling?

A. No.

Q. You don't know anything only what you have seen yourself?

A. No.

Q. And from what you have seen he is a polite, courteous boy?
A. Yes.
Q. You don't know where he was on May 1st?
A. No.
Q. Nor where his brothers were?
A. No.
Q. Nor where he got shot?
A. No.
Q. Nor how come him to get shot?
A. No.
Q. Were you on that run on the night of May 1st?
A. Not at night, I was that morning from 5:50 to 2:45.

Roy Wilson testified as follows:

Q. Where do you live?
A. At Asheville.
Q. What business are you in over there?
A. I am operating a service station.
Q. Do you know Ray Bailey?
A. Yes.
Q. How long have you known him?
A. About six years.
Q. Do you know his general character?
A. Yes.
Q. What is it?
A. Good.

Cross-examination:

Q. How long have you run a service station?
A. I have been there 5 years.
Q. How often have you seen Ray at the filling station in the last five years?
A. Numbers of times.
Q. He was always driving?
A. No, I never saw him driving a car many times; he [fol. 53] stayed over opposite me for a while.
Q. What did he do?
A. He went to Biltmore School.
Q. When was that?

A. I think the last semester, year before this last one.
Q. At whose home did he stay?
A. He stayed with Dock Renfrow and I think with Jake Peterson some, opposite my station.
Q. You never saw him working any?
A. He worked for D. C. Renfrow quite a while, he was in the produce business.
Q. You haven't known much about him for the last year?
A. I will say for three months before this I have seen him down there.
Q. What was he doing there?
A. He was visiting his folks and coming in and out.
Q. Who was with him?
A. I couldn't say.
Q. Did you ever see any of his brothers with him?
A. Yes.
Q. Which one?
A. Vernon, I believe.
Q. Where is Vernon now?
A. I couldn't say.
Q. Which other one did you see with him?
A. That is all.
Q. Do you know Reece?
A. No.
Q. You just knew Ray?
A. Yes.
Q. How far is it from Asheville to where Ray lives?
A. I think it is 43 miles from Asheville to Burnsville.
Q. That is all you know about Ray?
A. Yes.
Q. You have never been in his community at Burnsville?
A. I have been to Burnsville but not in his community.
Q. Did you ever visit in his community?
[fol. 54] A. I have visited Mr. Lewis.
Q. Did you ever talk to anybody over there about Ray Bailey?
A. No.

Dr. I. M. Finch testified as follows:

Q. I believe you live at Burnsville, N. C.?
A. Yes.

Q. And you are County Physician over there?
A. Yes.
Q. Do you know Ray Bailey?
A. I do.
Q. How long have you known him?
A. 6 years.
Q. Do you know his general character?
A. It is good.

Cross-examination:

Q. How long have you known him?
A. 6 years.
Q. Was he raised in Yancey County?
A. Yes.
Q. How long have you been in Yancey?
A. Twelve years.
Q. How far do you live from where Ray lives?
A. He lives about 5 miles from where I live.
Q. You got acquainted with him shortly after you went over there?
A. Yes, I have practiced in the family and been all around them.
Q. You are their family Doctor?
A. Yes.
Q. Has Ray been sick any?
A. Yes.
Q. Did you ever treat him for gunshot wounds?
A. No.
Q. You are the family physician?
A. Yes.
Q. You don't know why he didn't go to you when he got shot?
A. I was sick myself.
Q. Did he know you were sick?
A. Yes, everybody knew it.
Q. You haven't seen much of him for the last year or two, have you?
A. I have seen him several times coming in and out.
[fol. 55] Q. You don't know where he was going?
A. He said he was coming from Biltmore.
Q. You don't know where he was operating?
A. No.

Q. And you don't know anything about what he said in his affidavit about his drinking and gambling?

—. No.

Sam Byrd testified as follows:

Q. What is your business?

A. I teach school and farm.

Q. How close do you live to this defendant?

A. *J*ust a little over a mile.

Q. I believe you have known him all his life?

A. Yes.

Q. Do you know his general character?

A. Yes.

Q. What is it?

A. Good.

Cross-examination:

Q. You haven't seen much of him in the last year or two?

A. No, he hasn't been in the community so much, he has been in and out.

Q. Therefore, you don't know what his character and reputation have been during that time?

A. I do when he was at home, but not when he wasn't at home.

Q. You didn't know that he gambled like he said, and these other things?

A. No.

Q. You never heard of that; do you know his brothers?

A. Yes.

Q. Which one do you know?

A. All of them.

Q. Did you see him with them a good deal?

A. No, I haven't.

Q. Did you see him come and go with them?

A. No, I haven't for the last year or two.

[fol. 56] Q. Did you before the last year?

A. No, he had been at home up until the last year or two with one of his brothers.

Q. And has been away since then?

A. Yes.

Q. You don't know anything more about him?

A. No.

Q. When did he leave school in Yancey County?

A. I believe he finished High School close to where I live at Jack's Creek.

Q. And has been away most of the time since?

A. No, not most of the time, he has been away some of the time and I understood he was in school at Biltmore College until this last year.

Q. Which one of the boys went to Furman University?

A. I heard Reece went, is all I know.

Q. Reece is a brother of this one?

A. Yes.

Q. When was the last time you have seen Ray Bailey before you saw him today?

A. I saw him a week or two before I heard he was hurt on Biltmore Ave. in Asheville.

Q. What kind of clothing did he have on?

A. I couldn't say, he wasn't so dressed up; he didn't have on overalls as I remember, but I couldn't say what color his clothes were. I think I saw him in the bus station or close there.

Q. That was a week or two before this happened?

A. Yes.

Q. Did he tell you where he was going?

A. No, I didn't ask him. I saw him in front of the bus station, on the opposite side from where you enter the buses.

Q. Did he have a coat on?

[fol. 57] A. Yes, I think he had a coat on.

Q. Did he have a cap or a hat on?

A. I believe he was bareheaded.

Q. Did you ever see him wear any head gear of any kind?

A. Yes.

Q. What?

A. I think I have seen him wear a hat and a cap, too.

Q. The last cap and hat you saw him wear, what color was it?

A. I couldn't say.

Redirect examination:

Q. I believe that Biltmore school is a junior college?

A. Yes.

E. N. Stamey testified as follows:

Q. I believe you live over there near where Ray Bailey was reared?
A. Yes.
Q. Do you know his general character?
A. Yes.
Q. What is it?
A. Good.

Cross-examination.

Q. He hasn't been there much for the last year or two, has he?
A. He was some little time back.
Q. Since he left there you don't know anything about him?
A. No, not since he left.
Q. He has been gone about a year?
A. I wouldn't say whether it has been a year or not.

Petitioner rests.

Respondent's Evidence

John E. Corea testified for Respondent:

Q. I believe your given name is what?
A. John E.
Q. Where do you live?
A. At Greenville, S. C.
[fol. 58] Q. What position or occupation do you have?
A. City Detective, plain clothes.
Q. How long have you been working for the City in that capacity?
A. In the City 5 years and 3 years plain clothes.
Q. On the 1st day of May of this year, state whether or not you had a call to make some investigation?
A. Yes, sir, I had a call; a taxicab driver come to headquarters.
—. As a result of his coming state what you did?
A. We answered the call and went to the corner of Rutherford and Buncombe Streets.
Q. Is that leading in a northerly direction?
A. Yes.

Q. Did you follow the taxi?

A. Yes.

Q. Who was driving the taxi?

A. A negro by the name of John Austin.

Q. Who went with you?

A. Mr. Singleton and A. B. Hunt.

Q. Were they policemen for the City of Greenville?

A. Yes, Mr. Singleton is a detective and Mr. Hunt was a motorcycle officer.

Q. How was Mr. Hunt dressed?

A. In uniform, and Singleton in plain clothes.

Q. And you in plain clothes?

A. Yes.

Q. That was on what night of the week?

A. On Sunday night.

Q. How far did you go from headquarters before any difficulty arose?

A. I guess ten or twelve blocks.

Q. Did you come up on the taxicab after you followed it?

A. Yes, at the corner of Rutherford and Buncombe when it stopped.

[fol. 59] Q. At that particular corner what kind of building is there?

A. Right in the corner is a Drug Store in the intersection of the street; on the right where the taxi stopped is a fruit stand and filling station and small store on the road.

Q. Rutherford Street leads off more to the right?

A. Yes.

Q. And Buncombe Street leads to where from Greenville?

A. To Asheville.

Q. Rutherford Street leads in what direction?

A. Toward Greer and Spartanburg.

Q. And you say a filling station was on the right at the curve?

A. Yes.

Q. How was the lighting there?

A. It is well lit up and there is a street light in front of it and the fruit stand and practically all the store- were open.

Q. Is that street there well lighted?

A. Yes.

Q. And a drug store in the intersection?

A. Yes.

Q. Tell the Court just what you did when you stopped that taxicab; did you see anybody get in the taxi before you stopped it?

A. Yes.

Q. Who, how many men?

A. Two men.

Q. How long had they been in it before you called it to halt?

A. They just had got on the inside.

Q. Where did you pull your car with reference to the taxi?

A. I pulled to the left of the taxi and stopped opposite and in front of the left wheel.

Q. Did you get out?

A. Yes, Mr. Singleton first got out and we were as close to the taxi as to that light, and when he got out and I started to slide on over to the place where he got out and as he [fol. 60] stepped on the running board I noticed these men reaching for their guns and I said, "Watch, they are getting their guns", and Singleton jumped on the running board and opened the door and both cars were headed up Rutherford St.

Q. Which side did Singleton go to?

A. To the left side.

Q. How many doors were in the car?

A. It was a sedan.

Q. And he went to the left side; where did you go?

A. I went to the right.

Q. How close to the curb was this taxi?

A. Right at the curb.

Q. Where did Mr. Hunt go?

A. Him and I both went to the right and I got to the door first.

Q. What transpired between you and the men in the taxi?

A. Mr. Singleton opened the door when I saw them pull their guns and fired one shot and the gun fell out of his hand and Mr. Hunt was to the side of the automobile and a pistol fell on the ground and I was around to the right of the taxi with Hunt and Hunt was in the door ahead of me, and the fellow on the right hand side had a pistol in his hand and he wrenched it out of his hands and Mr. Hunt got the pistol; both of them had pistols, and one dropped

out and Mr. Hunt got the other. He wrenched the pistol from his hand and stepped back immediately to my left; I was then standing in the door. About that time somebody came up to my rear, Mr. Hunt was directly to my left and I heard this man say, "Don't shoot them any more, [fol. 61] you have them covered, stick them up", and he shot, and at the left side of the taxi I looked and saw the man with a gun and I pulled my gun and about that time I felt something hit me in the cheek and I forced him behind a pole.

Q. At that time had Mr. Hunt been struck?

A. Yes, Hunt was killed with the first shot from the man coming from behind me.

Q. And you say you forced him behind this post?

A. Yes; the first shot was fired and Hunt fell and I turned around and saw the man with a gun and I fired again, and I fell over in the taxi and something hit me in the face and then I come out of the taxi and this man went behind a telephone pole and I followed him and his hand was bleeding, and he had his gun trying to work it with both hands, and I went around the pole and shot once or twice and he was going around the pole, both of us going around the pole, and I had five bullets in my gun and I had shot four times; this man I was shooting at finally got off of the curb and in the meantime a little Ford pulled up and they started shooting from that and I held my side to the telephone pole and kept this man with his hands up, and he said, "Don't shoot me no more", and I said, "Lay your gun down", and he didn't, and I stepped right outside and shot him in the stomach and he threw his gun to the left and I told him to get in the taxi, and then I was out of ammunition, and he got in the Ford and drove away, and I got Hunt and sent him to the hospital.

By the Court: What did you do with the man you shot at around the pole?

[fol. 62] *Q.* He didn't get in the car; I made him throw his gun down and told him to go and get in the taxi, and instead of that he got in the Ford and went out Rutherford St.

Q. Can you go from Rutherford Street back into Buncombe?

A. Yes, by going around the Drug Store.

Q. There is a new road coming out of Greenville?
A. Yes, and that leads back into Buncombe St.
Q. How close were you to the man that shot Mr. Hunt?
A. As close as I am to that bell (about 2 ft.).
Q. How close were you all the time you were shooting?
A. Not farther than that water pitcher from him (about 5 feet).
Q. Could you see his face plainly?
A. Yes.
Q. Would you know the man?
A. Yes.
Q. Where is he?
A. Right there (indicating petitioner).
Q. Sitting in the chair?
A. Yes.
Q. How many shots in all would you say you fired?
A. Five.
Q. Were you struck by one of the balls?
A. Yes.
Q. He was facing in what general direction when he first did his shooting?
A. He came up from my rear.
Q. Would that be north or south?
A. It would be facing about south.
Q. Facing toward the front of the cab or the rear of the cab?
A. Facing right sideways of the cab.
Q. Where was Mr. Singleton at that time?
A. On the other side of the taxi.
Q. You say something got wrong with his gun?
[fol. 63] A. I didn't know it at the time but he was trying to work it with both hands and it seemed like he couldn't work it and he changed it to his left hand and he reached his hand around the telephone pole and we went around the pole two or three times and he had that bloody hand on the post and he put the pistol back in his right hand and held his hand up and that is when I made him throw the gun down.
Q. What became of it?
A. I picked it up and carried it to Headquarters.
Q. I will ask you to look at this and state what that is?
A. It is Rutherford and Buncombe Sts.

Q. Is that a photograph?
A. Yes.
Q. Does that show the streets?
A. Yes.
Q. Take a pencil and point out to His Honor the streets and where this happened?
A. This is Rutherford Street and this is Buncombe Street. I come from this direction and the taxi stopped here and the front of the car was about here, and we pulled up on the left side of the taxi and Mr. Hunt fell here on this curb; this is the telephone pole he and I went around shooting and I made him come off of the curb here and he threw his pistol here and the Ford pulled up here; and when he threw his pistol down I had no more ammunition and he backed off and stepped on the running board and hollered, "Let's go".

(The respondent offers the photograph in evidence, marked Respondent's Exhibit No. 2.)

Q. Look at this revolver; where did you get it?
A. It is the one I picked up there.
Q. Who had it, who was using it?
A. This gentleman here, Ray Bailey; two shots were [fol. 64] fired and there were four in it not fired.
Q. You say you have been in the City's service how long?
A. Five years this coming October.
Q. Was that gun put out of commission?
A. Yes.
Q. Will it work now?
A. No, the trigger spring is broken.
Q. Is there any marks on that gun anywhere?
A. Yes, that trigger is bent.

(Respondent offers gun in evidence, which is Respondent's Exhibit No. 3.)

Q. What is this on this pistol?
A. It looks to me like where a bullet hit.
Q. And the pistol was put out of commission?
A. Yes.
Q. What became of the men in the taxicab?
A. I don't know; at that time I was with him and they got away.

Q. How was Ray Bailey dressed that night?

A. He had on a dark khaki shirt and sleeves rolled up and dark grey breeches on, and his cap fell at the cab.

Q. I will ask you to look at this cap and state whether or not that is the cap he was wearing that night?

A. Yes, it is.

Q. Has that cap got blood on it or not?

A. Yes.

(Respondent offers cap in evidence, which is Respondent's Exhibit No. 4.)

Q. Did he have a coat on?

A. No.

Q. Were there any other people around there that you saw?

A. Yes, there was a pretty big crowd gathered about that time but I didn't pay attention to who was there; after the Ford drove off I told Basil Nash to call headquarters.

[fol. 65] Q. Mr. Hunt, I believe, died almost instantly?

A. Yes.

Q. When was the next time you saw Ray Bailey and where?

A. Two days afterwards in the hospital here on the hill.

Q. Did you go in the room where he was?

A. Yes.

Q. And was he the same man that shot Mr. Hunt?

A. Yes, sir.

Q. And that was in Greenville, S. C., on May 1st?

A. Yes.

Q. My final question, I ask you is that man, Ray Bailey, the man that killed Mr. Hunt?

A. Positively so.

Cross-examination:

Q. How long have you been an officer over at Greenville?

A. 5 years this coming October.

Q. How long had Mr. Hunt been an officer?

A. I think just a little over a year.

Q. Did you recognize the two men you saw get in *in* the taxi?

A. One of them.

Q. Who was it?

A. I wasn't at the hearing, and I haven't seen him since he got in the taxi; I don't know who he was.

Q. Did you come over to Buncombe County when they had three or four men arrested and see them in jail?

A. No.

Q. Did you visit there?

A. I was here at the hospital when he was arrested.

Q. Did you see anybody here or at Asheville that was over there?

A. Yes.

Q. Did you identify them?

A. Yes.

Q. What was the name?

A. Osborne Briggs.

Q. Osborne Briggs had a mustache?

A. Yes.

[fol. 66] Q. You say Osborne Briggs was in that taxi?

A. I identified him to be there.

Q. Who was with him?

A. I don't know, I didn't see the other fellow at all.

Q. Did you see Osborne Briggs clearly so you could recognize him?

A. Yes, I helped Mr. Hunt take the gun away from the man with the mustache.

Q. And you had a closer contact with him than with Ray Bailey?

A. Not so much difference.

Q. You took the gun out of his hand?

A. That is the closest I was to him, but I didn't touch him.

Q. You were not closer to Bailey than you are now?

A. Yes, half that distance.

Q. Osborne Briggs was close enough that you helped take a gun out of his hand?

A. Yes.

Q. And you are positive that was the man?

A. I identified him.

Q. And as clearly as this man?

A. Yes.

Q. And, of course, if you were mistaken about that you could likewise be mistaken about this man?

A. No, I didn't encounter with that man like I did this one; Mr. Hunt had already got the gun and I came to his assistance.

Q. I will ask you if you didn't say you helped take the gun away from Briggs?

A. Yes, I come to assist and he had the gun.

Q. Didn't you have a better opportunity to observe him than you did to observe Bailey?

A. No, I can't say I had any better opportunity.

Q. You identified him positively, didn't you?

A. Yes.

[fol. 67] Q. Did you identify anybody else positively?

A. Mr. Bailey.

Q. Anybody else?

A. Not that I know of.

Q. I will ask you if you didn't swear in an affidavit that you identified Vernon Bailey?

A. No, I did not.

Q. I will ask you if in the warrant you didn't swear——

A. Mr. Singleton did; I did for Briggs and Bailey.

Q. I will ask you if, when you came over and saw Vernon Bailey, if you didn't say he was there?

A. I wouldn't say positively; I wouldn't say Vernon was there.

Q. I will ask you by way of refreshing your recollection if you didn't swear at that time in an affidavit that you identified Vernon Bailey?

A. If I did I don't remember it right now.

Q. You wouldn't identify a man about a killing without knowing him, would you?

A. I don't think I did.

Q. I will ask you to refresh your mind again, the affidavits are filed, and if you didn't swear Vernon Bailey was there?

A. I swore to seeing Briggs and Ray Bailey and I may have sworn that; but I don't believe I did.

Q. If you did that, then you did it without knowing it?

A. No, I identified Briggs.

Q. You say you didn't identify Vernon Bailey?

A. No.

Q. If you did swear Vernon Bailey was there you swore it without knowing it?

[fol. 68] A. If I did it was a mistake on my part; I didn't know I was swearing for that one man.

Q. You are not that careless about swearing are you?

A. No, I am not that careless about swearing.

Q. So you say you couldn't identify Vernon Bailey?

A. I could by seeing him at the hospital; I wouldn't say I could identify him being there that night; I can't identify Vernon Bailey being there that night.

Q. Let's come back to Briggs—did you identify Reece Bailey?

A. I don't know anything about him.

Q. Did you swear out a warrant and swear Reece Bailey was there?

A. No.

Q. You swear positively you didn't swear Reece Bailey was there?

A. Yes.

Q. Nor in an affidavit either one?

A. No, I didn't make any affidavit Reece was there.

Q. The only people you identified was Briggs and Ray Bailey?

A. Yes.

Q. You say Osborne Briggs did not shoot but he got out a pistol?

A. Yes, he did not shoot.

Q. I will ask you if you didn't tell Sheriff Lawrence Brown of Buncombe County that Briggs was the man that shot Hunt?

A. No, absolutely not.

Q. I will ask you if, when you come over and identified Briggs in jail and before the hearing, if you didn't say to Lawrence Brown, "This man Briggs that had the mustache is the man that shot Hunt"?

A. No.

[fol. 69] Q. You are positive of that?

A. Yes.

Q. Who did you tell Sheriff Brown shot Hunt?

A. I don't think I ever said more than six words to Sheriff Brown in my life; I didn't see Brown when he was here.

Q. I will ask you if you didn't see Sheriff Brown once or twice?

A. I have seen him once but never here at Sylva.

Q. Let's come back to this night: You say two men were in the taxi and you had never seen either of them before?

A. No.

Q. And you and some other officers walked up to the taxi; who did that?

A. Mr. Singleton got to the taxi first.

Q. What did he do?

A. Opened the door.

Q. What did he say?

A. There was nothing hardly said, it was done so quick, and I said, "Watch out, they are getting guns", and Singleton fired.

Q. The officer here is the first man that fired?

A. Yes.

Q. Up to that time nobody had done anything to disturb the peace?

A. Two men in the taxi were drawing guns, one had a gun out.

Q. What did Singleton say?

A. I don't know.

Q. They were in the taxi?

A. Yes.

Q. You didn't have any warrant for them?

A. No, but we had a call from headquarters.

Q. Mr. Singleton didn't have any warrant?

A. No.

Q. You didn't know these men had committed any offense? *Q.* Hunt didn't have warrant?

A. No. *A.* I know if I had stood there they would have shot me.

Q. You didn't know they had committed any offense?

A. No.

[fol. 70] Q. Without a warrant and without knowledge they had committed an offense you and these officers went down there and went up to the door of the taxi?

Respondent objects.

Q. You had on citizen's clothes?

A. Yes.

Q. Without any of that you saw these men drawing pistols?

A. Yes.

Q. Singleton had on citizen's clothes?

A. Yes.

Q. And when Singleton went up there he had his pistol out?

A. I don't know.

Q. You had yours out?

A. No.

Q. Didn't you see Mr. Singleton have a pistol in his hand?

A. When he got out of the car I got out too.

Q. When you hollered, "Look out", Singleton shot?

A. No- long afterwards.

Q. Do you know if he hit these men?

A. I heard a groan in the taxi.

Q. And somebody began groaning?

A. Yes.

Q. And Singleton shot again?

A. No, Singleton shot once.

Q. How long was it before anybody else shot?

A. By the time I got around the car he had taken this gun from the other man and this man shot twice.

Q. Nobody in the car shot, did they?

A. No.

Q. Neither of these men ever fired a shot?

A. No, they didn't have a chance.

Q. You say the Ford drove up somewhere in the time of it?

A. Yes.

Q. You didn't see the Ford before that time?

A. No, I saw it after it drove up.

Q. When it drove up you and Mr. Singleton and Mr. Hunt were all around this taxi?

[fol. 71] A. At the time I noticed it Hunt was lying there dead. After I got behind the pole they started firing.

Q. You didn't see the Ford until after Hunt was shot?

A. No, I didn't see it pull off and stop.

Q. You didn't see anybody get out of the Ford until after Hunt was shot?

A. No.

Q. You didn't see anybody shoot Hunt?

A. Yes; I saw- I didn't see them get out of the Ford but I saw this man back of me that did shoot Hunt; where he came from I don't know.

Q. You say Hunt was dead before the Ford drove up?

A. No, I saw the Ford as the shooting was going on.

Q. Hunt then fell dead before you saw a shot fired except the shot Singleton fired?

A. Singleton fired one on the other side and I turned around and heard a man speak and he fired, and Hunt fell.

Q. Did you see that man before Hunt fell?

A. Yes, I heard him talking, he said "Don't sho-t them any more, you have them covered", and as I turned around he fired.

Q. You never saw him any more?

A. No, he came up to the si-e of the taxi and fired twice, once at Hunt and backed off and fired again.

Q. Did he hit Hunt the second time?

A. No, he hit my gun on the barrel and after I got the barrel (?) opened I couldn't load it.

Q. Two shots were fired?

A. Yes.

Q. And you said to throw up his hands?

A. Yes.

Q. And he did?

A. Yes.

Q. And you told him to drop the gun?

A. Yes.

Q. And he had his hands up?

A. Yes.

[fol. 72] Q. He didn't drop his gun?

A. No.

Q. While he was standing there with his hands up you shot him?

A. No, he had come back with that gun again; he was trying to work it, part of the time he had it up and part of the time he had it on me.

Q. Did he have his hands up when you shot?

A. He had them up and down; I shot him with the last shot I had.

Q. You got your pistol so it would work?

A. It never got out of commission.

Q. You shot him in the stomach?

A. Yes.

Q. Your pistol was out of commission for reloading?

A. Yes.

Q. You shot him once in the stomach, the first time?

A. No, the first time I shot from behind the pole; I don't know whether I hit him or not.

Q. You shot him one time in his stomach?

A. That is the last shot I fired; I fired 5 times; fired two or three times as we went around the pole.

Q. Was that all before you shot him in the stomach?

A. Yes. He was trying to get in front like he was trying to get one on me.

Q. How many shots did he fire?

A. Two; I didn't know his gun was out of commission at that time.

Q. That is all you noticed him fire?

A. Yes.

Q. You saw him in this encounter, going around the pole, and when he threw up his hands and then when he left you saw him get in the car and leave?

A. Yes.

Q. Was that all inside of a few seconds?

A. Yes; it was pretty quick.

[fol. 73] Q. When he got in the car and left, what became of these two men in the taxi?

A. I don't know what became of those two men; where they went I don't know.

Q. Did you see anybody else in the taxi with this man?

A. I saw the two in the taxi, I know there was two got in.

Q. Did you see anybody get in the Ford with this man?

A. I didn't notice anybody get in only when he went over and got in on the right hand side. When it ended I went to Mr. Hunt and saw he was still living and I turned his head over to one side, his mouth was full of blood.

Q. Who was there when the shooting ended?

A. Mr. Singleton and I, and Basil Nash of the fruit stand, and a fellow ran up and asked if he could help me any, Milan or something like that.

Q. Anybody else?

A. I don't remember right at that time.

Q. Do you remember a colored man being there who had a garage or a working place close there?

A. If there was any colored people come up there I didn't pay any attention to them and didn't see them; I was busy trying to do something for Mr. Hunt.

Q. Do you know Charley Williams?

A. I know Walter.

Q. Have you talked to him about this case?

A. No, I saw him at Mr. Leatherwood's office at the time I was there, he was talking to Mr. Leatherwood.

Q. Did you have him carried up there?

A. No.

[fol. 74] Q. Who did, do you know?

A. No.

Q. Did you hear his statement there?

A. Yes, I heard a few words he had to say about it.

Q. He said he was there and saw the whole thing?

A. Yes.

Q. And he said one of you officers shot Mr. Hunt, didn't he?

Respondent objects.

Q. You did hear him make the statement that he was there and saw the whole thing?

A. He said he was there but I didn't pay much attention to what he said he saw nor didn't see; I was on duty and went up just a few minutes and then back to duty. I think he was there when I come out; I heard him say he was there.

Q. I will ask you whether or not you heard him make a statement as to what transpired?

A. I heard him say a man come up in his shirt sleeves shooting.

Q. I asked you whether or not you heard the statement he made?

A. That is the statement he made.

Q. Did you hear him tell the details of it?

A. I heard him tell the details but I left before he got through.

Q. Were you up there again with him?

A. No, that is the first time I ever saw him.

Q. Just to refresh your recollection about it, I will ask you whether or not, while this colored man was telling

about how this shooting occurred, you didn't stop him and say, "No, that wasn't the way it was?"

A. No.

Q. I will ask you if he didn't make the statement that while the officers were shooting one of the officer's bullets killed Hunt?

A. No.

[fol. 75] Q. And if you didn't stop him and say, "No, you have it wrong?"

A. No.

Q. I want to see if you say that Ray Bailey and Osborne Briggs were the only two men you have ever identified as being present there?

Respondent objects.

Redirect examination:

Q. You say the car this boy got in and left in was continously shooting?

A. Yes.

Q. As they drove off?

A. Yes.

Q. How many shots were fired from that automobile?

A. At least 25 or 30.

Q. Do you know how many times you struck Ray Bailey?

A. I believe it would be safe to say I hit him twice.

Q. But you were shooting at him?

A. Yes.

Q. And there was no shooting until this man displayed firearms?

A. No.

T. C. Craigo testified as follows:

Q. Where do you live?

A. At Greenville.

Q. Do you know Ray Bailey when you see him?

A. Yes.

Q. Where is he?

A. Sitting over there in the chair.

Q. Did you ever at any time see him in Greenville, S. C.?

A. Yes.

Q. How long have you known him?

A. I just saw him at Greenville out at the Park place.

Q. How long was that before May 1st?

A. Two Sundays before that; about 2 weeks.

Q. How come you to know it was Ray Bailey, were you introduced to him?

A. Yes.

Q. Tell all that was said in Bailey's presence, by him [fol. 76] or anybody in his presence.

A. I went in to Mrs. Harben's out at Five Points, that is about a mile and a half from the City, and this boy and his two brothers were in the house and she made me acquainted with them.

Q. Did she tell you their names?

A. She called their names and said these were her friends from over in Yancey County, the Baileys.

Q. Did anybody in his presence ever call his name and tell you who this boy was?

A. Yes, that woman's daughter.

Q. What was the occasion of her referring to his name?

A. He was sitting in the corner with his head down, and this girl said Ray always got too much; she said he was drinking.

Q. Was he drunk?

A. Yes, he looked to be.

Cross-examination:

Q. How long were you there?

A. About thirty minutes.

Q. Do you go there frequently?

A. No, there was 3 more fellows with me.

Q. What were you going for?

A. This woman handles home brew and stuff and we went to get some home brew.

Q. Did you get it?

A. Yes.

Q. You got it as quick as you got there?

A. No, we were made acquainted with these boys.

Q. You drank some there, of course?

A. Yes.

Q. And, of course, the home brew had a little kick to it?

A. A little bit.

Q. And it affects your eyes?

A. No, it takes a right smart to affect your eyes.

[fol. 77] Q. You didn't see double?

A. No.

Q. But somebody told you these were the Baileys, friends from Yancey County?

A. Yes.

Q. And that was the extent of your observation; you didn't say anything to Ray Bailey?

A. No.

Q. And he looked like he was drinking?

A. Yes, he had his head down and he looked like he was pretty full; he was leaning over a little in the chair like he was pretty well filled up.

Q. He never did look up at you?

A. He would when he was talking and then he would drop his head.

J. C. Taylor testified as follows:

Q. Where do you live?

A. At Greenville.

Q. How long have you lived there?

A. 40 years.

Q. Do you know Ray Bailey?

A. Yes, when I see him.

Q. Where is he?

A. Right there.

Q. How long did you say you have know- him?

A. I have seen him for several years.

Q. Where did you ever see him?

A. At the Palace Theatre in W. Asheville.

Q. Did you ever see him at Burnsville?

A. Yes, and I saw him at a little place, Cashiers.

Q. Do you recall the time Mr. A. B. Hunt was killed at Greenville?

A. Yes.

Q. Did you see this boy, Ray Bailey, any time prior to that, and if so, when?

A. I saw him at Greenville on Saturday before I read about Mr. Hunt's death in the paper on Monday morning.

Q. What business are you in?

A. I am an ammonia machine operator?

[fol. 78] Q. What time in the day did you see Ray?

A. Just before I went to lunch.

Q. Where?

Q. When I first saw him he come in the back gate on Broad Street in Greenville.

Q. What did he want?

A. He wanted a rub brush to clean an ammonia condenser with.

Q. Did he get it?

A. Yes.

Q. How long did he stay there?

A. Just a few minutes.

Q. Did you talk to him?

A. Just a few words.

Q. What did you say to the boy, if anything?

A. I asked him if there was anything to the little spat he had at the Palace Theatre in West Asheville, and he said, no, they didn't do anything about it.

Q. There was no question about your knowing him?

A. No, and he knows me.

Q. When he come there did you see him any more that day?

A. Yes.

Q. How long after that?

A. Just a few minutes after I got back from lunch.

Q. How long after he was in there the first time?

A. 45 or 50 minutes.

Q. What was his business then?

A. He returned the brush.

Q. Did you have an occasion to talk to him then?

A. He seemed like he wanted to be going and I wasn't going to ask him to stay when it was against the Company's rules.

Q. Why did he return the brush.

A. When he asked for the brush I told him he had to bring it back, that all those things were in my care and if [fol. 79] they got lost I would have them to pay for and he said he would put up a deposit but I didn't take it.

Q. When he got ready to leave did you go out of the store with him?

A. No, I wasn't in the store, I was in the engine room.

Q. Did you go anywhere with him?

A. No.

Q. How was he traveling?
A. In a Ford roadster.
Q. By himself?
A. Yes.
Q. What kind of license *were* on his car?
A. An Indiana tag.
Q. What color was the car?
A. Kind of grey Ford.
Q. When was the next time you saw him?
A. This morning; I saw them bring him down the road.

Cross-examination:

Q. Where are you living now?
A. At Greenville.
Q. How long have you been living there?
A. Forty years.
Q. Have you lived there continuously during that time?
A. No, I have been away for two or three years.
Q. Where were you?
A. At Pine Bluff.
Q. Have you never lived in Yancey County?
A. I have never made Yancey County my home.
Q. And never lived in Asheville?
A. No.
Q. You say you have seen Ray Bailey before the time you claim you saw him in South Carolina?
A. Yes.
Q. You are sure you were acquainted with him?
A. Yes.
Q. And you are just as positive about being acquainted with him beforehand as you are of seeing him on the day you mention?
A. Yes.
Q. What work do you do?
A. I am an operating engineer; that is the way they speak of it as running an ammonia compressor.
[fol. 80] Q. Who do you work for?
A. Valentine —— Company.
Q. How long was it since you had seen Bailey until that Saturday?
A. 4 or 5 months.
Q. Where did you see him last?
A. In West Asheville.

Q. Whereabouts?
A. In front of the Palace Theatre.
Q. That was several months before that day?
A. I couldn't say, but it was 4 or 5 months.
Q. When he come in there he wanted to borrow a brush?
A. Yes.
Q. To clean a condenser?
A. Yes.
Q. And after some conversation you loaned him the brush and he brought it back?
A. Yes.
Q. You say this was on what date?
A. It was on Saturday.
Q. You wouldn't say whether it was April or whether it was March?
A. It was in May, I think.
Q. You saw him on some Saturday in May?
A. Yes.
Q. And you are positive about that?
A. Yes.
Q. On some Saturday in May of this year?
A. Yes.

Redirect examination:

Q. You know you saw him on Saturday before Mr. Hunt was killed the next day?
A. I saw him on Saturday before I read about Hunt's death on Monday; I don't know that Hunt is dead, I didn't see him.

L. MARKHAM testified as follows:

Q. Mr. Markham, where do you live?
A. 202 Elm Street, Greenville.
Q. What business are you engaged in?
A. Grocery business.
[fol. 81] Q. How long have you lived in Greenville?
A. All my life with the exception of 8 years.
Q. Do you know Mr. Corea?
A. Yes.
Q. And Mr. Singleton?
A. Yes.

Q. Where is your business with reference to Buncombe and Rutherford Streets?

A. Three doors down from the corner.

Q. Did you happen to be at your place of business on the night Hunt was killed?

A. No.

Q. Were you in that vicinity?

A. Yes.

Q. What was the first thing that attracted your attention of anything being wrong?

A. The first thing was the shooting that started in the taxicab after it pulled up and the police car pulled up behind it.

Q. Had you seen the taxi before the officers come up?

A. I hadn't paid any special attention to it, except a man come in the fruit store and called a taxi.

Q. Then you say the shooting started in the taxi?

A. I couldn't say positively whether the shooting started in the taxi or outside.

Q. What, if anything, did you do?

A. At first I was curious when I saw the cops pull up there and I thought perhaps some liquor was in the cab and I got in a fair view of them when the first gun fired, and then I started to leave and everything quieted down and I thought it was all over, and about the time I walked down another man come wa-king up and said, "Stick 'em up, coppers, stick 'em up"; that was a man walking from the corner of Rutherford St. from a garage; where he come from I don't know; he did not get out of the taxi.

[fol. 82] Q. On which side did he come?

A. On the curb side.

Q. What did he say as he approached the officers?

A. The only thing I heard was, "Stick 'em up, coppers, stick 'em up."

Q. Who was he speaking to?

A. Evidently Mr. Hunt.

Q. Who was on the same side with him?

A. Mr. Corea was coming around back of the cab and in reach of the door of the cab.

Q. Where was Singleton?

A. On the other side toward the street.

Q. What took place then?

A. After a second or so after the fellow said "Stick 'em up", a shot was fired.

Q. What did Hunt say?

A. He went to turn around and was shot down.

Q. By whom?

A. I suppose by the man that come up.

Q. Did he have his gun on him?

A. Yes.

Q. How close did he get to him?

A. Approximately five feet.

Q. How about the lights there?

A. The light is fairly good as a usual thing.

Q. Were you close enough to recognize him?

A. Yes.

Q. Have you seen him here today?

A. Yes.

Q. Where is he?

A. This man here.

Q. You are certain that is the man?

A. Yes.

Q. Is that the man in the chair there?

A. That is the man that came walking up between the cab and the telegraph pole.

Q. Is he the man that shot Mr. Hunt?

A. He shot at him twice.

Q. What did Mr. Hunt do when he shot?

[fol. 83] A. He fell to the sidewalk.

Q. What did Mr. Corea do?

A. He began shooting with this fellow around the post.

Q. Do you know how many times he shot at him?

A. No.

Q. Do you know whether or not anybody hit him?

A. No.

Q. Did you see any blood?

A. Yes, his right hand was bleeding.

Q. Did he have a coat on?

A. No.

Q. What kind of shirt did he have on?

A. A brown khaki shirt rolled up above the elbows and blood was on his right hand and arm.

Q. What was the color of his pants?

A. They were not light; they might have been grey or dark.

Q. What did he have on his head?
A. When I first saw him he had on a cap.
Q. What became of the cap?
A. It must have dropped off; it was a dark cap, I couldn't say what color, I could not identify the cap.
Q. You never saw him up here until today?
A. I saw him a week ago today and today.

Cross-examination:

Q. You say you came up about a week ago and saw him in the hospital?
A. Yes.
Q. Who came with you?
A. Mr. Corea and Mr. Bramlett and four more fellows were along, I don't know who they were, that was the first time I had met them.
Q. From Greenville?
A. Yes.
Q. These two men that came with you, do they live in Greenville?
A. Yes.
Q. Were they officers?
A. No.
Q. They were just along?
A. Yes.
[fol. 84] Q. You had never seen Ray Bailey before, if you saw him that night?
A. That was the first time I saw him.
Q. If you saw him that night you had not seen him again until you came up here last week?
A. No.
Q. I will ask you if you didn't state to parties in Greenville after you went back from up here that you could not identify this man?
A. No, I did not.
Q. I will ask you if you didn't make a statement to a party in Greenville that you came up here and that he looked something like the man but you couldn't identify him?
A. No, sir; I did not.
Q. Did you make any statement to anybody?
A. No; I did not.
Q. Did anybody ask you about it?

A. Yes, several asked me about it.

Q. Who?

A. I don't remember the names, it was fellows around the place.

Q. You made a trip up here to see this man?

A. Yes.

Q. That was the purpose of your trip?

A. Yes.

Q. When you went back somebody who knew you came up here and asked you if you had been up here?

A. Yes.

Q. And you tell His Honor you don't know who asked you that?

A. I don't know any particular person, it was all of them together, fellows that hang around there, I don't remember their names.

Q. You mean to swear to His Honor that you can't give the names of a single man—you made the trip to see the [fol. 85] man and looked at him and people asked you whether or not you could identify him and you don't know who asked you? You say it was several men around the place?

A. One at the filling station asked me, Dan.

Q. What did you tell him?

A. Nothing.

Q. You had been to see this man, hadn't you?

A. Yes, but that is no reason for me telling anybody I saw him; I didn't care to answer their questions.

Q. You knew Dan, didn't you?

A. No, we were only acquaintances.

Q. He was well enough acquainted to ask you whether or not it was this man?

A. No.

Q. And you said nothing?

A. No.

Q. Who else asked you?

A. I don't know, one of the fellows in the store might have asked me, a man Rutledge.

Q. What did you tell Rutledge?

A. Nothing.

Q. Who else asked you?

A. I don't remember the names of every one that asked me; if they asked me they asked me in a bunch and I paid no particular attention to it.

Q. You haven't answered any of them until today?

A. No.

Q. Today is the first time you have ever said this is the man?

A. Yes.

Q. You rode up with Mr. Corea and these other gentlemen and went in the hospital and looked at the man and you went back and never told them a thing?

A. No.

Q. And they asked you, didn't they?

A. No.

Q. You mean to say they brought you up here to identify a man—how far is it to Greenville?

[fol. 86] A. About 119 miles.

Q. To identify a man and let you go in and look at him and then you rode back 119 miles and they never asked you as to whether or not you could identify him?

A. They didn't exactly ask me that.

Q. And you didn't tell them?

A. No.

Q. You didn't tell anybody until today?

A. No.

Q. And they brought you back not knowing whether or not you would identify him?

A. Yes.

Q. Who came with you today?

A. They are all here.

Q. The same crowd that came before?

A. No.

Q. How many different?

A. They are all different with the exception of three, Sheriff Bramlett and Mr. Corea and two other fellows; I think Mr. Leatherwood has the names.

Q. Who came with you today?

A. I couldn't mention all their names.

Q. I am talking about in the car with you?

A. Mr. Taylor and Mr. Singleton and Moseley, I think is the name.

Q. You didn't tell either of them?

A. No.

Q. They put you on the stand and you had never told it until now?

A. No.

Q. The Solicitor didn't know what you were going to swear?

A. No, he did not.

Q. Just you and the Lord knew?

A. Yes.

Q. And you mean to swear to His Honor that the Solicitor put you on the stand to swear to this man and didn't know whether or not you would identify him?

A. Yes.

Q. And you swear you never told anybody you had identified him?

A. Yes.

[fol. 87] Q. And you are as certain about that as you are that you saw Ray Bailey?

A. Yes, absolutely.

Q. When did they get you as a witness?

A. I was there when the shooting took place.

Q. You have been a witness ever since and never told anybody?

A. Yes.

Q. You have opened up your heart and turned out the information for the first time?

A. All this you have asked me; yes.

C. E. Singleton testified as follows:

Q. What official position do you hold in the City of Greenville?

A. City Detective of the Police Department.

Q. You have been working in that capacity for how long?

A. As a detective a little over a year and a half.

Q. Had you ever been connected with the Police Department prior to that?

A. I was a traffic officer, a patrolman.

Q. In all, how long have you served with the City?

A. I came to the City in October, 1925.

Q. Were you on duty on Sunday night, May 1st, of this year?

A. Yes.

Q. Did you receive any information from anybody?

A. Yes.

Q. From whom?

A. A taxi driver.

Q. In consequence of that information, what did you and some of the officers do?

A. We went to the corner of Buncombe and Rutherford Streets.

Q. Who went with you?

A. John E. Corea and A. B. Hunt, both City officers.

Q. When you got there did you find anybody?

A. Yes.

[fol. 88] Q. Who?

A. We found a taxi driver.

Q. Was he the same one that come to the Police Station?

A. Yes.

Q. Where was he at the time you found him up there?

A. His car was parked in front of a filling station on the right of Rutherford St.

Q. Did anybody get in it?

A. Yes.

Q. White men?

A. Yes.

Q. What did you and the other officers do?

A. I got out on the right hand side and Mr. Corea and Mr. Hunt were on the left.

Q. Which side of your car did you get out of?

A. On the right.

Q. Where did you go with reference to the taxi?

A. To the left of the taxi.

Q. Where did Corea and Hunt get out of your car?

A. On the right.

Q. Where did they go?

A. To the right of the taxi.

Q. When you approached this taxi what, if anything, happened, what did you see or hear?

A. I heard two men talking but did not hear what they said, and I opened the door of the taxi and as I opened the door a man whipped out an automatic pistol, the man next to me.

Q. What did you do?

A. I told him to drop it and stick 'em up.

Q. Did he do it?

A. Not right at that instant.

Q. When he didn't observe your command, what did you do?

A. I shot at him, and from the position he was I thought I shot him?

[fol. 89] Q. Did he drop the gun?

A. Yes.

Q. What transpired then, did they shoot?

A. Yes, about the same time, a few seconds after that, and a man came up from in front of the taxi, the taxi had the glass down and the front door had a wide shield, about that wide (indicating), and this guy comes up in front and said, "Stick 'em up", and "Officer, don't shoot them, you have them covered", and I saw a pistol in his hand and I commenced firing and fired three times; he had shot once or twice.

Q. Who did he shoot at?

A. Mr. Hunt was shot.

Q. When he was shot what, if anything, did Mr. Hunt do?

A. He fell back.

Q. And then you went to shooting at this man?

A. Yes.

Q. What kind of a gun did he have in his hand?

A. I couldn't tell at that time, it was a revolver; I could tell it was a pistol.

Q. How was he facing with reference to Mr. Hunt and Mr. Corea?

A. Hunt and Corea were right back towards the back and he was along towards the front and he was about the hood, between the post and the car.

Q. That threw what side of the boy doing the shooting to you?

A. The right side.

Q. You were shooting from where?

A. The left side of the car.

Q. Did the bullets from your pistol strike his gun?

A. I couldn't say about that, I was aiming right at him.

Q. What, if anything, happened to his pistol?

A. From examination of his pistol I found it had been hit by the bullets.

[fol. 90] Q. From whose direction had that bullet struck that pistol?

A. From this side, from my side.

Q. How many times did this boy fire at that time?

A. I heard two shots and at that time a car had come up and it was all done so quick; there was two distinct shots before there was any fired from the car.

Q. Was it pretty light there?

A. Yes, it was light; it is about as light a place as there is in town.

Q. What happened after the shots were fired, what did Mr. Corea do?

A. They got to shooting and I kept this big boy with the mustache covered; he was in the back seat of the taxi.

Q. What became of the other one in the taxi?

A. He was still there, laying over and groaning, and about that time a gun come up and shot out the back glass in the car and I was on the outside of the car and I shot all the cartridges I had.

Q. Then where did you get to protect yourself?

A. They drove on off when they got this fellow; we didn't leave the scene at all.

Q. What became of the two men in the taxi?

A. I don't know how they got out but they got out, for they were shooting at me out of the car and I didn't pay any more attention to the man in the car.

Q. This man on the sidewalk that shot Mr. Hunt, was he able to walk to the car?

A. He slumped about like a man that was wounded; he didn't run, but got to the car by himself.

Q. What became of the pistol?

[fol. 91] A. Mr. Corea picked it up.

Q. How close did this car stop to where the shooting took place?

A. About half as far as from here to the back of the Court room.

Q. Headed in the same direction as your car?

A. Yes.

Q. Is that the pistol you speak of (handing pistol to witness)?

A. Yes.

Q. Have you examined that to ascertain whether or not it is in operation?

A. Yes, I examined it that night.

Q. Were you able to operate it?

A. No.

Q. How was that man dressed?

A. He had on a light khaki shirt and some kind of light trousers and a light cap; that is the cap he had on, it fell off of his head sometime but I don't know when it fell off.

Q. You got the cap?

A. Yes.

Q. Was he operating his gun with one or both hands, or did he change it from one hand to the other?

A. He started shooting with his right hand, one hand, and later on it looked like he was trying to shoot it with both hands; they were shooting from two different ways and I had one man in the taxi and was trying to keep him there,

Q. Did you ever see any blood on this man?

A. Yes, on his hand.

Q. Were his sleeves long or short?

A. They looked like they were cut off or rolled up.

Q. Have you seen that man since?

A. Yes.

Q. When?

A. On Tuesday after that.

Q. Where?

A. At the Harris Community Hospital here in Sylva.

Q. Where is the man now?

[fol. 92] A. Sitting there in that chair (indicating petitioner).

Q. Do you know that is the man?

A. Yes, I would know him anywhere.

Cross-examination:

Q. That is the dark cap there that Mr. Markham identified?

A. Yes.

Q. Mr. Markham said it was a dark cap, you heard him say it was a dark cap?

A. That is the cap he had on.

Q. After you heard that Mr. Bailey had been brought here to the hospital at Sylva you immediately came up here, didn't you?

A. Yes.

Q. And you stayed here several days?

A. No.

Q. How many days did you stay?

A. I stayed here from the afternoon until the next morning.

Q. You were here continuously from the time you came here until you left and associated with Vernon Bailey?

A. I never saw Vernon but one time, that is when he come in the hospital.

Q. You swore out a warrant for him while you were here?

A. I think we swore out a fugitive warrant; I swore out a warrant for him at Greenville.

Q. And you swore out a warrant for him at Sylva as being a fugitive from justice?

A. Yes.

Q. You swore he was in Greenville, S. C. on the night of May 1st, 1932?

A. I suppose that is the form of the warrant.

Q. I am asking you about the form of the oath, you swore that?

A. I swore out a warrant for him.

Q. I am asking you if you didn't swear that Vernon Bailey was in Greenville, S. C., on the night of May 1st, 1932?

A. Yes.

[fol. 93] Q. Do you swear it now?

A. Yes, sir.

Q. You were there and could see exactly what Corea could see?

A. No, he couldn't see all I could see.

Q. You swore out a warrant for Briggs?

A. Yes.

Q. And you said he was there May 1, 1932?

A. Yes.

Q. And you still swear it?

A. Yes.

Q. You had a talk with Sheriff Brown?

A. Yes, I stopped there.

Q. You told Sheriff Brown the man that did the shooting was the man with the mustache?

A. No, I positively did not.

Q. Have you ever identified anybody else as being there on the night of May 1, 1932, except Ray Bailey, Vernon Bailey and this school teacher from Yancey County, Briggs?

A. No, I have not, but I can identify one other one that was there; I would know him if I saw him, I don't know his name, but I would know his face.

Q. You are as positive in your statements that this young school teacher from Yancey County was there as you are that this man was there?

A. Yes, I am, I may be wrong.

Q. And you may be wrong when you say Ray Bailey was there?

A. I will swear he was there.

Q. And you swore the school teacher was there?

A. Yes.

Q. You meant it?

A. Yes.

Q. And you still stick to it?

A. Yes.

Q. And you are as certain Briggs was there as you are that Ray Bailey was there?

A. Yes.

Q. And you are positive Vernon Bailey was there?

A. Yes.

Q. And you came to Asheville after Briggs was placed in jail?

A. No.

[fol. 94] Q. You knew that Judge Sink requested that on the second hearing on the habeas corpus you present yourself there for cross-examination?

A. No, I didn't know anything about it, I never heard of it.

Q. You didn't present yourself at the hearing at Asheville?

A. No.

Q. And you didn't do it because of the fact that you couldn't identify this man Vernon Bailey?

A. I had already identified him.

Q. You had done that in an ex parte affidavit but you didn't dare put yourself there for cross-examination?

A. I wasn't handling that part of it; I was doing what I was instructed to do.

Q. You follow instructions?

A. Yes, certainly, in cases of that kind.

Q. Were you following what you were instructed to do when you swore out a warrant in South Carolina against Reece Bailey?

A. I couldn't say about that, I can't say Reece Bailey was there the night of the shooting; I swore out a warrant for Ray Bailey.

Q. You couldn't identify him, Reece Bailey?

A. No.

Q. You wanted to take him out of North Carolina and try him in South Carolina when you didn't identify him?

A. We might get other evidence.

Q. Your idea is to pick up North Carolina citizens and carry them into South Carolina with the idea that sometime you will pick up enough evidence to try him on?

A. No, sir.

Q. That is what you meant when you said you might get something against him?

A. If there was anything.

[fol. 95] Q. If you didn't know Reece Bailey was in South Carolina tell the Court why you swore he was?

A. I didn't swear I saw him there.

Q. Why did you swear in an affidavit to be used against Reece Bailey that he was there?

A. I didn't swear in an affidavit to be used against Reece Bailey, I swore out a warrant.

Q. You swore that he aided, assisted and abetted in the murder of A. B. Hunt; how would you expect him to do that if he wasn't there?

A. He might have been there.

Q. You would make an affidavit against a man in an effort to take him from this State to another because he might have been there?

A. Yes.

Q. If you think some man might have been there you would make an affidavit in an effort to carry him out of this State, you would do that, wouldn't you?

A. We indicted more for investigation than anything else on Reece.

Q. Have you got any real excuse when you knew there was a hearing at Asheville before Judge Sink for not appearing there when it was continued for you and Mr. Singleton and Mr. Corea?

Respondent objects.

Q. You won't say that State's counsel advised you to stay away?

A. No, we had identified Briggs and Vernon Bailey and made affidavits to that effect and we couldn't have added anything by going.

Q. But you didn't present yourself and allow us to subtract anything from it?

A. Lawyers don't usually do that kind of business; lawyers usually don't present everything they have got in a habeas corpus proceeding.

[fol. 96] Q. Are you an attorney?

A. No, but I know they don't present all the evidence they have in a habeas corpus.

Q. Your idea is that you didn't appear in Asheville, that the lawyers didn't want to present the truth?

A. No, sir.

Q. That is what you were undertaking to do, take a man out of North Carolina by little piecemeal ideas of what the truth is?

A. No.

Q. You came up when you had a call without a warrant and without process?

A. Yes.

Q. When you got there you were the first man to fire?

A. Yes.

Q. The man you fired at never fired a shot?

A. No, he didn't have a chance.

Q. You shot that man down before he was even given a chance, without a warrant and without process.

A. I shot him down in defense of my own life; he had a pistol drawn on me and it was cocked and it would shoot ten times.

Q. And there was a man sitting there with a pistol ready to take your life?

A. Yes.

Q. And he gave you time to reach in your pocket and get your pistol and shoot him down and he never fired a shot?

A. No, I had my pistol in my hand when I opened the door.

Q. Did you have it on him?

A. I told him to stick his hands up for I saw him getting his pistol. If he had put his hands up I wouldn't have shot him.

Q. You shot a man in Greenville, S. C. without a warrant and without anything else except the fact that he didn't stick his hands up?

[fol. 97] A. Except that I thought he was going to shoot me.

Q. Then all the time in the back end of this car was this dangerous school teacher with the mustache?

A. Yes.

Q. And, of course, he had a gun?

A. Yes.

Q. And he didn't shoot?

A. No.

Q. He just sat back there silent in the back of the automobile?

A. Yes.

Q. And watched you shoot his companion?

A. Mr. Corea and Mr. Hunt took his gun away from him.

Q. But they hadn't come up at the time you shot this other man?

A. About the same time.

Q. They were not at the back of the car at that time?

A. Yes, about the same time.

Q. He didn't fire a shot?

A. No.

Q. And the men in the taxi were the men you were after, neither of whom had ever done a thing to you?

A. No, sir.

Q. And you had no warrant to arrest them?

A. No, but I wasn't going to stand there and be shot.

Q. You didn't have a warrant for the school teacher?

A. No.

Q. After you shot him down when did you see the other man?

A. Right after that, a few seconds; it all happened in just a flash, you might say.

Q. You didn't fire any more?

A. Yes, I shot at him three times.

Q. And you hit him three times?

A. I don't know.

Q. Of course, you shot at him to save your own life?

A. Yes, to save the life of my buddy.

Q. And you shot the other man to save your own life?

A. Yes.

Q. Why didn't you shoot the school teacher?

A. The men had his gun.

[fol. 98] Q. This man Corea was going all the time, circulating and spinning around the post?

A. They were both going around the post.

Q. And this boy was spinning around the telephone post?

A. Yes.

Q. Hugging each other?

A. No, they were hugging the post.

Q. And all that time you had an automatic piling it into Ray?

A. No.

Q. You mean you ceased hostilities?

A. I was shooting at the car, they were shooting at me from the automobile.

Q. They shot 30 or 40 shots and never did hit you?

A. No, I don't understand yet why they didn't.

Q. You stood in front of the Ford car?

A. No, I was on the left side of my car.

Q. And they were shooting at you from the back?

A. Yes, they shot out all the glass shooting at me through the back glass.

Q. You were in the front of it?

A. No, I was right where I had been all the time.

Q. They were not shooting at you?

A. There was bullets hissing all around, I don't see why they didn't hit me.

Q. You then had already, at the time this officer Corea shot this young man, as you say, you had already shot him through three times?

A. No, I didn't say I had shot him through, I shot at him.

Q. How far were you from him?

A. Just the width of the car, about 6 feet.

Q. You leveled your gun 6 feet from him and fired directly into him?

A. Yes, right at him.

Q. And, of course, all the time he was shooting at you?

A. No.

[fol. 99] Q. He never did shoot at you?

A. No, not that I know of.

Q. So, in order to save your own life, you filled this man with lead?

A. He was shooting at my buddy.

Q. What hour was it that night?

A. I would say it was around 10:30; we changed at 10:45 and it was just before leaving time.

Q. What time do you use?

A. Eastern time.

(Respondent reads affidavit- of Claude E. Brown, John E. Thrash, Lawrence E. Brown and W. L. Hyer.)

Miss ESTHER BAKER testified as follows:

Q. Your name is Miss Esther Baker?

A. Yes.

Q. Are you the night nurse at the hospital?

A. I was at the time Mr. Bailey was brought there?

Q. Where do you live?

A. My home is at Webster.

Q. You are a Jackson County girl?

A. Yes.

Q. How long have you been at the hospital?

A. I have only been here this time since the 1st of January; I started five years ago and worked three years and have been away about two years until I come back the 1st of January.

Q. What were your duties at the hospital at the time Ray Bailey was brought in about May second?

A. I was night nurse and on general duty.

Q. Were you there at the time they brought Bailey to the hospital?

A. Yes.

Q. Do you know who brought him?

A. He said it was his brother.

Q. What did he say his name was?

A. I didn't talk to Mr. Bailey at all, I got his history [fol. 100] from his brother, and he said his name was Vernon Keith and he said the boy's name was Ray Keith.

Q. You made a record when he entered?

A. Yes, Ray Keith.

Q. About what time of day on May 2nd did he enter the hospital?

A. At five-thirty in the morning.

Q. He was brought there in an ambulance?

A. Yes.

Q. How was he dressed?

A. I didn't pay particular attention to the way he was dressed, but as far as I can remember, he had on dark pants and a light shirt and didn't have on any coat.

Q. What about his sleeves?

A. I know they were not down long; they were either rolled up or cut off, for I remember he had his arms like this (indicating) and his arms were naked.

Q. Did he have on a hat or a cap?

A. No, he was on an ambulance cot.

Cross-examination:

Q. Did you hear the Doctor ask him how he got hurt?

A. I did not.

Q. You didn't hear him make any statement about the shooting?

A. No.

Q. I believe he was very sick for some time?

A. Yes.

Q. It was uncertain for several days whether or not he would live?

A. It looked that way.

Q. I believe after he had been there for some time, probably two or three weeks, he had a hemorrhage and came near dying?

A. Yes, one night after I went on duty.

Q. And I believe they phoned for his people because [fol. 101] they thought he was going to die?

A. Yes.

Q. I will ask you if you didn't hear him say either to you or somebody else when they told him it was probable he couldn't live, "You tell my folks if I die that I was not a Greenville, S. C., and had nothing to do with it"?

A. No, I did not, for I wasn't in the room after Miss Barringer came in, and I didn't go back in the room but once more to take her midnight lunch.

Q. And you didn't hear that statement?

A. No.

A. C. Mann testified as follows:

Q. I believe you are an Attorney?

A. Yes.

Q. What official position do you hold in Greenville, South Carolina?

A. I am Mayor of the City.

Q. Do you know John E. Corea?

A. Yes, I do.

Q. Do you know his general character in that community?

A. I do.

Q. What is it?

A. Good.

Q. Do you know C. E. Singleton?

A. Yes.

Q. Do you know his general reputation in that community for good character?

A. Yes.

Q. What is it?

A. Good.

C. R. BRAMLETT testified as follows:

Q. What position do you hold in Greenville County?

A. Sheriff of Greenville County.

Q. Do you know the officer, Mr. Singleton, who was on the stand?

A. Yes.

Q. How long have you known him?

A. Ten or twelve years.

Q. Do you know his general character?

A. Yes.

Q. What is it?

A. Good.

Q. Do you know Mr. Corea?

A. Yes.

[fol. 102] Q. How long have you known him?

A. Five or six years.

Q. Do you know his general character?

A. Yes.

Q. What is it?

A. Good.

L. W. HAMLIN testified as follows:

Q. What position do you hold at Greenville?

A. Chief Detective of the Police Department.

Q. Do you know Mr. Singleton?
A. Yes.
Q. How long have you known him?
A. About eleven years.
Q. Do you know his general character?
A. Yes.
Q. What is it?
A. Good.
Q. Do you know Mr. Corea?
A. Yes.
Q. Do you know his general character?
A. Yes.
Q. How long have you know- him?
A. Six and a half years.
Q. What is his general character?
A. Good.

J. H. Hough testified as follows:

Q. Where do you live?
A. At Greenville, S. C.
Q. What is your position in Greenville, if any?
A. Member of the City Council and Chairman of Police.
Q. Do you know Mr. Singleton?
A. Yes.
Q. How long have you known him?
A. Five or six years.
Q. Do you know his general character?
A. Yes.
Q. What is it?
A. It is excellent.
Q. Do you know Mr. Corea?
A. Yes.
Q. How long have you known him?
A. Six or seven years.
Q. Do you know his general character?
A. Yes, it is excellent, too.

C. Fred McCullough testified as follows:

[fol. 103] Q. Your name is Fred McCullough?
A. Yes.

Q. Where do you live?
A. In the City of Greenville, South Carolina.
Q. Do you know Mr. Singleton who was on the stand a while ago?
A. Yes.
Q. How long have you known him?
A. 6 or 8 years.
Q. Do you know his general character?
A. Yes, sir, I do.
Q. What is it?
A. Very good.
Q. Do you know Mr. Corea?
A. Yes.
Q. How long have you known him?
A. Probably the same time, 6 or 8 years.
Q. Do you know his general character?
A. Yes.
Q. What is it?
A. Good.
Q. What position do you hold, if any, with the City of Greenville?
A. Member of the City Council from Ward #6.

JOHN J. MANEY testified as follows:

Q. You are the Sheriff of Jackson County:
A. Yes.
Q. Where did you reside before coming to Jackson County?
A. In Buncombe County.
Q. Do you know where Brevard Road is in Buncombe County?
A. Yes.
Q. Do you know where Vernon Bailey lived about the time of this alleged shooting?
A. Yes, he lived near Acton on No. 10.
Q. How far is that from Brevard Road?
A. Imagine about four miles.
Q. Brevard Road, I believe, turns off from the end of the car line in West Asheville?
A. Yes.

Q. And Vernon Bailey lives across the road from Church Crowell's place?

A. Yes.

Q. He lives on the left side of the road coming this [fol. 104] way?

A. Yes.

Q. And lives in sort of a white house?

A. Yes.

Q. The name of the road is what?

A. Number 10 Highway.

Respondent rests.

PETITIONER IN REBUTTAL

Mrs. S. J. HUSKINS testified as follows:

Q. Where is your home?

A. At Burnsville.

Q. What position do you hold there?

A. Register of Deeds.

Q. What relation are you to Ray Bailey?

A. He is my brother.

Q. A younger brother?

A. Yes.

Q. Did you have occasion to make some investigation about the cap?

A. Yes.

Q. Why did you make this investigation?

A. I came to Sylva last Friday and went back Saturday afternoon and when I got back home I heard that the South Carolina officers had been trying to get a cap or hat identified and I heard they had been to the Sheriff's office there and I began to——

Q. In undertaking to ascertain what became of Ray's cap, where did you go?

A. I went to Mr. Smith's home. He had been staying there and I knew he had been there on Sunday that this killing had taken place on Sunday night.

Q. Does Ray go bareheaded a good deal of the time?

A. Yes, I very seldom see him with a cap or hat on.

Q. When did you go to Smith's?

A. Last night as I came back to Sylva.

Q. When you went to Smith's state whether or not you found this cap?

[fol. 105] A. I asked if Ray had a cap there and they said he did and I asked if they would get it for me and they brought it to me.

Q. What did Mr. Smith say, if anything, as to when he left the cap there?

A. He said he didn't have on a cap the day he was there, that he didn't leave with any cap on that day and that this cap had been there since then and it was Ray's cap and the only cap he knew of Ray having.

Q. And you got this cap from him last night?

A. Yes.

(Petitioner offers the cap in evidence.)

Cross-examination:

Q. This is a light cap?

A. Yes.

Q. And Ray was in the habit when he wore anything of wearing a cap?

A. I wouldn't say in the habit.

Q. Has he got a hat?

A. I don't know.

Q. You have investigated to try to find one?

A. No, I haven't.

Q. Didn't you tell the Court they were trying to identify a cap or hat?

A. Yes, trying to identify the cap as being Ray's.

Q. You don't know whose cap that is there on the stand?

A. No.

Q. You don't know whether it is Ray's cap or not?

A. No.

Redirect examination:

Q. Did you ever see Ray with that cap on?

A. No.

W. C. Smith testified (Recalled) as follows:

Q. Mr. Smith, you were on the stand this morning?

A. Yes.

Q. Did Mrs. Huskins come to your house and make in-
[fol. 106] quiry about a cap?
A. Yes, she got Ray's cap.
Q. Did you give this cap to her?
A. Yes.
Q. Whose cap is that?
A. Ray Bailey's.
Q. Was it le-t at your house by him?
A. Yes.
Q. The Sunday before this alleged killing occurred state whether or not he wore any cap or hat?
A. When he left there he left bareheaded.
Q. State whether or not Ray went bareheaded?
A. You hardly ever saw him with a cap or a hat on.
Q. This is a cap he left at your house?
A. Yes.

Cross-examination:

Q. He wore a khaki shirt a good deal with the sleeves cut off or rolled up?
A. He generally wore white shirts; I never saw him with a khaki shirt on.
Q. What did he have on that day?
A. He had on a kind of a grey suit of clothes.
Q. And he had on a coat?
A. Yes.
Q. What kind of shirt did he have on?
A. A light shirt.
Q. That is the Sunday that he left your house that Hunt was killed in Greenville, S. C.?
A. Yes, he was going fishing and that is the last time I saw him.
Q. Did he take any baggage with him?
A. He had a car with him, I don't know what he had in the car.
Q. Did he have a suitcase or a satchel?
A. No.
Q. Therefore, he had no baggage; can you imagine where he changed from the light shirt to the khaki that the man that brought him over in the ambulance said he had on and it was bloody? Can you imagine where he changed it, if he did?
A. No.

[fol. 107] (Respondent offers in evidence all affidavits which have been read.)

By the Court: Gentlemen, I think there has been an issue raised here, I don't think I have a right to pass on, that of identity, and at the same time I don't think it would be fair to the defendant to send him to South Carolina to stand a trial, as it would be very expensive to him and his folks; under the testimony I don't think there would be a jury anywhere that would ever find him guilty beyond a reasonable doubt. I shall, therefore, discharge him under the writ and let him go.

The respondents except to the rulings of the Court and hereby give notice in open Court of intention to appeal to the Supreme Court, and also give notice in open Court that respondents will make application to the Supreme Court for a Writ of Certiorari for the purpose of reviewing the record and rulings and findings of the Court.

IN SUPERIOR COURT OF JACKSON COUNTY

Before Hon. Walter E. Moore, Judge Resident 20th Jud. Dist.

In the Matter of RAY BAILEY (alias RAY KEITH)

Writ of Habeas Corpus

JUDGMENT

This cause coming on to be heard and the same being heard before the undersigned Judge Resident of the 20th Judicial District of North Carolina, at Sylva, N. C., on this the 27th day of June, 1932, upon the petition and Writ of Habeas Corpus in this cause, and it appearing to the Court that a fugitive warrant was issued for Ray Bailey, alias Ray Keith, and that thereafter the Governor of North Carolina, upon request of the State of South Carolina, issued warrant of Extradition for Ray Bailey, alias Ray Keith, and thereafter petition for Writ of Habeas Corpus was [fol. 108] sworn out by the said Ray Bailey, and Writ of Habeas Corpus was thereupon issued, and the State of South Carolina appearing in Court and being represented by Hon. J. G. Leatherwood, John M. Queen, Solicitor of the

20th Judicial District, and D. D. Alley; and the State of South Carolina having introduced its evidence, and the defendant, Ray Bailey, having introduced evidence, all of which appears in the record; Thereupon, the Court finds as a fact:

1. That Ray Bailey (alias Ray Keith) is a citizen and resident of the State of North Carolina.

2. That he is not a fugitive from justice from the State of South Carolina, and was not present at the time of the commission of the alleged crime at Greenville, South Carolina.

3. That the State of South Carolina has failed to show probable cause for holding the said Ray Bailey in custody, or that he committed the alleged crime—the murder of A. B. Hunt, and has failed to produce sufficient evidence to warrant the Court in refusing the Writ, and the Court finding from all the evidence introduced in this cause that the petitioner is entitled to the relief sought in his petition and the Writ of Habeas Corpus;

It is, therefore, upon motion of Clyde R. Hoey, G. D. Bailey, Dan K. Moore and Charles Hutchins, Attorneys for the Petitioner, considered, ordered, decreed and adjudged by the Court that the petition and Writ be allowed and that the defendant be and he is hereby released from custody.

Witness my hand, at Sylva, North Carolina, June 27th, 1932.

Walter E. Moore, Judge Resident of the 20th Judicial District of N. C.

In Supreme Court of North Carolina, Fall Term, 1932

[fol. 109] No. 642

In re Ray Bailey

Jackson County

Writ of Certiorari

To the judge, clerk, and other officers of the Superior Court of said County, Greeting:

We, being willing, for certain causes, to be certified of the proceedings in the above-named cause, lately pending in

said Superior Court, and of the Judgment thereupon in our said Superior Court, do by these presents command that you send the transcript of the proceedings in said cause, and of the record of said judgment therein, with all things touching the same, by whatsoever names the parties may be called therein, to the Justices of our Supreme Court, distinctly and plainly, under the seal of said Superior Court, together with this writ, so that we may have them before the Justices of our Supreme Court on the Second Monday of September next, at the City of Raleigh; and further do what of right and according to the form of the act of Assembly, in such case made and provided, shall be meet to be done.

Witness my hand and seal of office at Raleigh, this 31st day of Aug., 1932.

Edward Murray, Acting S. C. C.

IN SUPREME COURT OF NORTH CAROLINA, FALL TERM, 1932

No. 642

In re RAY BAILEY (alias RAY KEITH), Relator in Extradition

Jackson County

WRIT OF CERTIORARI

To Judge Walter E. Moore, judge of 20th Judicial District:

We, being willing, for certain causes to be certified of the proceedings in the above named cause, lately heard by you on a writ of Habeas Corpus, do by th-se presents command that you send the record of the proceedings in said cause, including evidence heard before you therein, and of the record of said judgment therein, with all things touching [fol. 110] the same, by w*ah*tsoever names the parties may be called therein, to the Justices of our Supreme Court distinctly and plainly, under the seal of said Superior Court, together with this writ, so that we may have them before the Justices of our Supreme Court on the Third Monday of September, inst., at the City of Raleigh; and further do what of right and according to the form of the act of the Assembly, in such case made and provided, shall be meet to be done.

Witness my hand and seal of office at Raleigh, this 9th day of September, 1932.

Edward Murray, Acting Clerk of the Supreme Court of the State of North Carolina. (L. S.)

I hereby accept service on the within Writ this September 12th, 1932.

Walter E. Moore, Resident Judge, 20th Judicial Dist.

IN SUPERIOR COURT OF JACKSON COUNTY, IN CHAMBERS

In re RAY BAILEY, alias RAY KEITH, Relator in Extradition

RETURN TO WRIT OF CERTIORARI

To the Honorable Walter P. Stacy, Chief Justice, and Associate Justices of the Supreme Court of North Carolina, Raleigh, North Carolina:

In obedience to a Writ of Certiorari issued by your Honorable Court, which said Writ is hereto attached, the undersigned, Walter E. Moore, Judge of the Superior Court of the 29th Judicial District of North Carolina, do hereby certify that the foregoing and hereto attached record consisting of 88 pages is the true and correct evidence taken before me in a hearing of Habeas Corpus in the above entitled action at my chambers in Sylva, North Carolina, on the 29th day of June, 1932, together with the original Arrest Warrant, Requisition of the Governor of South Carolina, Extradition Warrant, Return of J. J. Maney, Sheriff of Jackson County, North Carolina, on Fugitive Warrant, [fol. 111] Application for Writ of Habeas Corpus, Writ of Habeas Corpus, Sheriff's Return on said Writ, together with all those certain affidavits filed by Petitioner and Respondent, together with the Judgment in said case. The same constitutes the entire record in the above entitled case.

Witness my hand and seal this the 13th day of September, 1932.

Walter E. Moore, Resident Judge of the 20th Judicial District.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 112] IN SUPREME COURT OF NORTH CAROLINA

In re the Matter of RAY BAILEY, alias RAY KEITH, Relator in Extradition

PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of North Carolina:

Your petitioners, the State of North Carolina, and the State of South Carolina, respectfully showeth to your Honorable Court:

I

That on or about the first day of May, 1932, one A. B. Hunt, a duly qualified and acting motorcycle Policeman for the City of Greenville, State of South Carolina, was instantly killed by gun-shot wounds allegedly at the hands of one Ray Bailey, alias Ray Keith, and that your verifying Petitioners, J. J. Maney, is Sheriff of the County of Jackson, State of North Carolina, and J. G. Leatherwood, is solicitor for the Thirteenth Judicial Circuit for the State of South Carolina.

II

(1) That on or about the 5th day of May, 1932, thereafter, came before one Bates Aiken, a duly qualified and acting Magistrate for the County of Greenville, State of South Carolina, one J. E. Corea, and made oath to an arrest warrant, charging the said Ray Bailey alias Ray Keith with the murder of the said A. B. Hunt (State's Exhibit No. 1 in Habeas Corpus proceedings In Re Ray Bailey alias Ray Keith).

(2) That thereafter, on the 7 day of May, 1932, a demand in Requisition (State's Exhibit No. 2) was duly made [fol. 113] by His Excellency, I. C. Blackwood, Governor of South Carolina, under the Seal of said State, upon His Excellency, O. Max Gardner, Governor of North Carolina, for the delivery of Ray Bailey alias Ray Keith, who was alleged to be a fugitive from justice from the State of South Carolina seeking asylum in the State of North Carolina.

(3) That pursuant to said demand in Requisition a Warrant in Extradition (State's Exhibit No. 3) was duly caused to issue by the Governor of North Carolina, and under the Great Seal of said State, commanding the arrest of the said Ray Bailey alias Ray Keith, and his delivery into the custody of the agents of the State of South Carolina; that on June 7, 1932, return was made on said Extradition Warrant by John J. Maney, Sheriff of Jackson County, North Carolina, setting forth the arrest and custody of the said Ray Bailey alias Ray Keith.

(4) That thereafter, on the 7 day of June, 1932, the said Ray Bailey alias Ray Keith, petitioned (State's Exhibit No. 4) the Honorable Walter E. Moore, one of the several Judges of the Superior Court of the State of North Carolina, for a writ of Habeas Corpus, and that on said date a Writ of Habeas Corpus (State's Exhibit No. 5), signed by the said Walter E. Moore, Judge, was duly caused to issue to the said John J. Maney, commanding him to produce the body of Ray Bailey alias Ray Keith, before the said Judge at his Chambers in Sylva on June 27, 1932; that said petition of the said Ray Bailey alias Ray Keith alleged that he was being illegally imprisoned and restrained of his liberty; that in due time Sheriff J. J. Maney filed his return to said petition, alleging that the prisoner, to-wit the said Ray Bailey alias Ray Keith, was not being un-
[fol. 114] lawfully imprisoned, but that he was being held in custody by reason of authority contained in a Warrant of Extradition issued by the Governor of North Carolina.

That pursuant to said writ a hearing in Habeas Corpus was duly — on said date; that on said hearing all the several processes in Extradition were duly presented and introduced in evidence; that the said petitioner in Habeas Corpus did not attack the processes in Extradition nor any part thereof, but set up, as a cause for his release, evidence tending to show that he was not in the State of South Carolina on or near the time of the alleged murder and that he was not a fugitive from justice of said State, and introduced witnesses tending to establish an alibi.

IV

That when the said petitioner, Ray Bailey alias Ray Keith, rested the States of South Carolina and North Caro-

lina, Respondents, introduced no less than three witnesses who testified to the effect that: (a) they were personally present when the said A. B. Hunt was killed, and that they saw plainly and recognized the slayer; (b) that the Relator in Habeas Corpus, to-wit, Ray Bailey alias Ray Keith, was positively identified in open court as the person who fired the shots resulting in the instant death of the said A. B. Hunt. (See affidavits of J. E. Corea, C. E. Singleton and L. Markham, attached as Exhibits A, B and C hereto and made a part of this petition.)

That the testimony offered by the State of North Carolina and the State of South Carolina at said Habeas Corpus hearing showed further that the assailant of policeman A. B. Hunt was dressed at the time in a khaki shirt, in shirt sleeves, and lighter colored pants, and that he wore a light gray cap; the facts as further adduced at said hear-[fol. 115] ing showed conclusively that the cap worn by the slayer was dropped at the place where the killing occurred, and also the revolver or pistol used by the slayer was shot or struck by one of the officer's bullets, putting the same out of commission, and the same was recovered by the officers at the spot where the officer, A. B. Hunt, was killed. This pistol was offered in evidence at the hearing and bore marks of having been struck by something similar to a pistol ball, putting the same out of commission; that the policemen, to-wit, J. E. Corea and C. E. Singleton, described in detail all the facts and circumstances surrounding the slaying of A. B. Hunt, and described the slayer's dress; that the said J. E. Corea and C. E. Singleton further testified at said hearing that they could and did positively identify the said Ray Bailey alias Ray Keith, who was then in court, as being the slayer of A. B. Hunt in the city of Greenville, State of South Carolina, on May 1, 1932; they further testified that the said Ray Bailey alias Ray Keith was shot, and it developed as a fact that the said Ray Bailey alias Ray Keith, was on the night of May 1, 1932, carried from the home of his brother, Vernon Bailey, near Asheville, North Carolina, to a hospital in Sylva, North Carolina, for the purpose of being treated for certain pistol wounds in his abdomen and on his right thumb; the State offered an affidavit of one Mr. H. L. Tyer, an ambulance driver and funeral di-

rector, which was accepted by the Court, to the effect that he was called to carry the said Ray Bailey alias Ray Keith from the home of Vernon Bailey near Asheville, North Carolina, to the hospital at Sylva, North Carolina, and that at the time the said Ray Bailey alias Ray Keith was in his shirt sleeves, wearing a khaki shirt and lighter colored pants, which tended to corroborate in every respect [fol. 116] the description as given by the officers.

V

That all of the Exhibits referred to in the within petition, including the warrant issued by Magistrate Bates Aiken, the Requisition of the Governor of South Carolina, the Warrant of Extradition by the Governor of North Carolina, the petition for Writ of Habeas Corpus, the Writ of Habeas Corpus, together with certain affidavits used at said hearing, and a true and correct transcript of all the testimony taken have been duly filed in the Office of the Clerk of the Superior Court for Jackson County, State of North Carolina; that the petitioners have filed with the Clerk of the Court for Jackson County a proper undertaking for costs.

VI

That at the close of all the evidence His Honor found as a fact:

(1) That the Relator would be put to great expense to stand trial in the State of South Carolina.

(2) That a jury nowhere would, under the evidence, convict the Relator of the murder of A. B. Hunt, and thereupon, discharged the Relator, Ray Bailey alias Ray Keith, from custody.

That said conclusions of law and findings of fact, and the subsequent judgment thereon were, your petitioners are informed and believe, contrary to the law in such case made and provided and were not in accordance with the evidence produced in said proceedings.

Wherefore the Petitioners respectfully petition your Honorable Court that a Writ of Certiorari be issued to the Clerk of the Superior Court of Jackson County, to the end

[fol. 117] that the record may be sent up to be reviewed for errors in law and conclusions of law and the findings of fact under the evidence.

J. G. Leatherwood, Queen & Alley, Attorneys for Petitioners.

[fol. 118] IN SUPREME COURT OF NORTH CAROLINA, FALL TERM, 1932

No. 642

In the Matter of RAY BAILEY, alias RAY KEITH

Habeas Corpus. Before Moore, J., June 27, 1932, Jackson Superior Court

OPINION

On May 5, 1932, a warrant was issued by a magistrate of Greenville County, South Carolina, charging that on May 1, 1932, Ray Bailey, alias Ray Keith, "did shoot, kill and murder one A. B. Hunt" in the town of Greenville, South Carolina. The Governor of South Carolina duly made requisition upon the Governor of North Carolina, and on May 9, 1932, the Governor of North Carolina duly issued a warrant of extradition, requiring the arrest of said Bailey. Bailey was arrested on 7 June, by the Sheriff of Jackson County, and thereupon applied for a writ of Habeas Corpus. The writ was issued by Moore, J., on the 7th day of June, and was heard by him on the 27th day of June, 1932. At the hearing it appeared that Hunt had been killed in Greenville, South Carolina at about 10:30 P. M. on the night of May 1st. A police officer of Greenville, South Carolina, who claimed to be present at the killing testified positively to the identification of Bailey, and further testified that, in the gun battle between Bailey and police officers, resulting in the death of Hunt, Bailey had been shot by police officers and seriously wounded in the hand and abdomen. Another police officer of Greenville, South Carolina, who claimed to be present at the shooting also positively identified Bailey as the man who killed Hunt. A merchant of Greenville, South Carolina, also identified Bailey [fol. 119] as the slayer of Hunt.

Bailey offered evidence of many witnesses as to his whereabouts on the day of the killing, and further offered positive evidence from several disinterested witnesses that he was found shot down on the road between Burnsville and Asheville at about 10:30 o'clock on the night of May 1st. The place, where the testimony showed that he was found lying in the road seriously wounded, was approximately eighty-five miles from Greenville, South Carolina. The evidence for Bailey further tended to show that the persons who found him lying in the road seriously wounded, carried him to Asheville and from thence he was then carried to a hospital at Sylva in Jackson County. Bailey testified that he had been shot by a companion on the night of May 1st, resulting from a quarrel over a poker game, and offered testimony of disinterested witnesses tending to corroborate his statement. Bailey denied that he was in South Carolina on the day of the crime or that he had been in the State for sometime prior thereto, and contended that he was charged with the crime merely because he had been found in a hospital seriously wounded early the next morning. There was further evidence to the effect that police officers of South Carolina had arrested other members of the Bailey family, charging them with the murder of Hunt, and positively identifying them as present at the killing, and that failing to offer at the hearing evidence of identity, they had all been discharged under writ of Habeas Corpus.

Bailey offered the evidence and affidavits of approximately twenty witnesses, and the State offered affidavits and testimony of twelve witnesses.

At the conclusion of the hearing the record shows the following:

(By the Court), "Gentlemen, I think there has been an issue raised here, I don't think I have a right to pass on, that of identity, and at the same time I don't think [fol. 120] it would be fair to the defendant to send him to South Carolina to stand a trial, as it would be very expensive to him and his folks; under the testimony I don't think there would be a jury anywhere that would ever find him guilty beyond a reasonable doubt. I shall, therefore, discharge him under the writ and let him go.

The respondents except to the rulings of the Court and hereby give notice in open Court of intention to appeal to

the Supreme Court, and also give notice in open Court that respondents will make application to the Supreme Court for a Writ of Certiorari for the purpose of reviewing the record and rulings and findings of the Court.

Thereafter a formal judgment was entered as follows:

"This cause coming on to be heard and the same being heard before the undersigned Judge Resident of the 20th Judicial District of North Carolina, at Sylva, N. C., on this 27th day of June, 1932, upon the petition and Writ of Habeas Corpus in this cause, and it appearing to the Court that a fugitive warrant was issued for Ray Bailey, alias Ray Keith, and that thereafter the Governor of North Carolina, upon request of the State of South Carolina, issued warrant of extradition for Ray Bailey, alias Ray Keith, and thereafter petition for Writ of Habeas Corpus was sworn out by the said Ray Bailey, and Writ of Habeas Corpus was thereupon issued, and the State of South Carolina appearing in court and being represented by Hon. J. G. Leatherwood, John M. Queen, Solicitor of the 20th Judicial District, and D. D. Alley; and the State of South Carolina having introduced its evidence, and the defendant, Ray Bailey, having introduced evidence, all of which appears in the record;

Thereupon the court finds as a fact:

1. That Ray Bailey (alias Ray Keith) is a citizen and resident of the State of North Carolina.

2. That he is not a fugitive from justice from the State [fol. 121] of South Carolina, and was not present at the time of the commission of the alleged crime at Greenville, South Carolina.

3. That the State of South Carolina has failed to show probable cause for holding the said Ray Bailey in custody, or that he committed the alleged crime—the murder of A. B. Hunt, and has failed to produce sufficient evidence to warrant the court in refusing the writ, and the court finding from all the evidence introduced in this cause that the petitioner is entitled to the relief sought in his petition and the Writ of Habeas Corpus;

It is, therefore, upon motion of Clyde R. Hoey, G. D. Bailey, Dan K. Moore and Charles Hutchins, attorneys for

the petitioner, considered, ordered, decreed and adjudged by the Court that the petition and writ be allowed and that the defendant be and he is hereby released from custody."

A petition was filed in the Supreme Court of North Carolina for a writ of certiorari to bring up the record, which was duly granted on the 31st day of August, 1932, and the record was duly certified by Judge Moore on September 13, 1932.

John M. Daniel, Attorney General of South Carolina; Cordie Page, Assistant Attorney General of South Carolina; J. G. Leatherwood, Queen & Alley, for demanding State.

Clyde R. Hoey, G. D. Bailey, Dan K. Moore, Charles Hutchins, for petitioner.

BROGDEN, J.:

When a Writ of Habeas Corpus has been issued to inquire into the legality of an arrest on a warrant of extradition, what is the function of the hearing judge and the legal effect of his findings of fact?

C. S. 2234 defines the duty of the judge before whom the writ is returnable, and also, prescribes the scope of the hearing. He shall immediately (a) "examine into the facts contained in such return and into the cause of the confinement"; (b) "and if issue be taken upon the material facts, * * * or other facts are alleged to show that the imprisonment * * * is illegal"; (c) "the * * * judge [fol. 122] shall proceed in a summary way to hear the allegations and proofs on both sides"; (d) "and * * * do what to justice appertains, in delivering, bailing or remanding such party".

The statutory words "if issue be taken upon the material facts * * * the judge shall proceed in a summary way to hear the allegations and proofs of both sides", preclude the idea that such hearing shall be perfunctory and merely formal. This Court said In re Veasey, 196 N. C., 662, 146 S. E., 599:

"One who is sought to be extradited may contest the validity of the extradition proceedings on writ of habeas corpus by showing (1) that he is not charged with a crime in the demanding state, or (2) that he is not a fugitive from

the justice of the demanding state. Both of these are jurisdictional matters, and, if the accused can establish either, he is entitled to be discharged from custody. The first is a question of law to be determined upon the face of the requisition and the indictment or affidavit accompanying it, the law of the demanding state, of course, furnishing the test; while the second is a question of fact, which, when controverted, may be established by evidence like any other disputed fact."

See also In re Hubbard, 201 N. C., 472. All the authorities, including the decisions of this state are to the effect that it is not proper to hear evidence upon the guilt or innocence of the prisoner or to take into consideration the merits of the case or of the defenses to be interposed at the trial or of an alibi, or of other matters involving the ultimate issue of guilt. Nevertheless, these are general observations and legal assertions. If the petitioner was not in the demanding state when the crime was committed, certainly he could not be guilty of a crime, and hence it is obvious that the question of presence in the demanding state at the time of the crime involves in a certain sense guilt or innocence, alibi or other defenses that may be interposed at the trial. It is apprehended, however, that the courts mean to say that the bald question of presence in the demanding state at the time of the commission of the alleged crime was the primary question to be considered.

[fol. 123] In arriving at a conclusion as to whether the prisoner should be remanded or discharged, a difficult question stands at the threshold: What quantum of proof shall the hearing judge require in order to determine the ultimate issue of fact as to whether the prisoner was in the demanding state at the time of the crime? It has been asserted that if the evidence is conflicting upon the subject of presence in the demanding state at the time the crime was committed that the prisoner is not entitled to be discharged, but should be remanded for trial. It has also been said that if there is some evidence of the presence of the prisoner in the demanding state at the time the offense was committed, a discharge is not warranted or justified. See Munsey v. Clough, 196 U. S. 364, 49 Law Ed. 515; Hyatt v. New York, 188 U. S. 691, 47 Law Ed. 657. That is to say, that if there is more than a scintilla of evidence in

favor of the demanding state, the judge should discharge the Writ of Habeas Corpus and remand the prisoner. Hence, if any sort of reckless or fanciful testimony should be offered tending to show the presence of a prisoner in the demanding state, the accused might thereupon offer the testimony of a thousand disinterested person who knew absolutely that he was not in the demanding state at the time, nevertheless the courts would be powerless to afford protection. Manifestly under such interpretation the beneficent powers of Habeas Corpus would be set at naught and the "hearing" provided by law would be no more than a hollow form or fleeting shadow. Nevertheless the demanding state is vitally interested in the outcome. It has the right to try and punish offenders against its peace and dignity, committed within its jurisdiction. Consequently a difficult task is imposed upon a judge in undertaking to decide the important question involved.

The statute of this state, C. S. 2234, enjoins the judge "to do what to justice appertains in delivering, bailing or remanding such party". Obviously the statute does not undertake to limit the judge in arriving at his conclusions, [fol. 124] but apparently commits the result to the exercise of his sound legal discretion. The nearest approach to a positive declaration of this court upon the quantum of proof is contained in State v. Herndon, 107 N. C. 934, 12 S. E. 268. Upon the facts appearing in the record, the court said:

"If the judge, upon the investigation of the evidence on a petition for habeas corpus, adjudges that there is or is not probable cause, and admits or refuses to admit to bail, no appeal or certiorari lies, either in favor of the State or the petitioner. * * * The quantum of evidence and the number of witnesses to be examined must necessarily be left also to the sound discretion of the judge who hears the writ, and his action in that regard cannot be reviewed."

In the case at bar a controversy of fact arose between the contending parties, that is the demanding state and the prisoner, as to whether the prisoner was in the demanding state at the time the alleged offense was committed. The Writ of Habeas Corpus was created and fashioned for the express purpose of determ-ing such controverted fact. The statute and public policy require that such fact be deter-

mined in a summary manner. Doubtless in given cases different minds would work out diverse conclusions, but after all it is perhaps wise that the determination of the ultimate fact should be lodged in the sound legal discretion of an impartial judge, commissioned by the law of the land and the inherent sense of the responsibility of his high office "to do what to justice appertains". He hears the witnesses and observes their mental leanings or bias toward the question involved. He senses the atmosphere of the case. Moreover it would doubtless be a dangerous experiment to undertake by a judicial decree of an appellate court to prescribe a legal strait-jacket for such matters.

Exercising the power delegated by statute and supported in principle by the decisions of this state, the hearing judge found certain facts and set them forth in his judgment. The last inquiry in the solution of the appeal is: What is [fol. 125] the effect of the findings of fact set out in the judgment? Whatever may be the variable conclusions reached by other courts, that inquiry is settled in North Carolina. The law is thus stated:

"The findings of fact made by the judge of the Superior Court, found as they are upon competent evidence, are also conclusive on us, and we must therefore base our judgment upon his findings, which amply sustain his order." In re Hamilton, 182 N. C., 44, 108 S. E., 385.

See also Clegg v. Clegg, 186 N. C., 28, 118 S. E., 824; In re Hayes, 200 N. C., 133, 156 S. E., 791.

It is true that the judge made certain remarks appearing in the record, tending to show that he was undertaking to view the case from the standpoint of guilt or innocence or the ultimate probability of acquittal upon trial in the demanding state. If these remarks had been incorporated into the judgment itself, a wholly different factual situation would be presented upon the appeal, but the judge expressly declared in the judgment as signed that he found as a fact "that he (prisoner) is not a fugitive from justice from the state of South Carolina, and was not present at the time of the commission of the alleged crime at Greenville, South Carolina." The judgment as written and signed speaks the mind of the judge and his conclusion upon the matters in issue. Therefore, the judgment as rendered must stand.

Affirmed.

[fol. 126] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 127] In Supreme Court of North Carolina, Fall Term, 1932

No. 642

In the Matter of Ray Bailey, alias Ray Keith

Clerk's Certificate as to Date of Judgment

I, Edward Murray, Acting Clerk of the Supreme Court of the State of North Carolina, do hereby certify that the decision of this Court affirming the Judgment of the Superior Court of Jackson County, North Carolina, in the above-entitled case, was filed on the 26th day of October, 1932, and that Judgment in accord with said decision was rendered on same date.

Witness my Hand and Seal of said Court at my office in Raleigh, N. C., this 1st day of February, 1933.

Edward Murray, Acting Clerk of the Supreme Court of the State of North Carolina. (Seal of the Supreme Court of the State of North Carolina.)

[fols. 128-133] Supreme Court of the United States

The State of South Carolina, Petitioner,

vs.

Ray Bailey, alias Ray Keith

Order Extending Time—Filed Jan. 20, 1933

On hearing the annexed Petition for extension of time in which to file a Petition for Writ of Certiorari in this case in this Court, it is now, Ordered, that the time for filing the Petition for Writ of Certiorari in this Court to the Supreme Court of North Carolina be and hereby is extended thirty days, assuming that the time for filing the petition has not already expired.

Charles E. Hughes, Chief Justice.

January 20, 1933.

[fol. 134] [File endorsement omitted.]

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 27, 1933

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

FILED
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892

No. 685

THE STATE OF SOUTH CAROLINA, PETITIONER,

vs.

RAY BAILEY, alias RAY KEITH.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA AND BRIEF IN SUPPORT THEREOF.

JOHN M. DANIEL,
Attorney General,
J. IVEY HUMPHREY,
Asst. Attorney General,
J. INGRAHAM WILSON,
Asst. Attorney General,
J. G. LEATHERWOOD,
Solicitor,
QUEEN & BAILEY,
Attorneys for Petitioner.

WILLIAM C. WOLFE,
Counsel,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 685

THE STATE OF SOUTH CAROLINA, PETITIONER,

vs.

RAY BAILEY, ALIAS RAY KEITH.

PETITION FOR WRIT OF CERTIORARI.

To the Honorables the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of the State of South Carolina would respectfully show to the Court:

The petitioner seeks the issuance of a writ of certiorari by this Court to the Supreme Court of the State of North Carolina, which is the highest court and court of last resort in that State, requiring that court to certify to this Court all of the proceedings in this case had in such court in order that this Court may examine such record for error or errors com-

plained of by the petitioner as contravening its rights under the Constitution of the United States.

The petitioner alleges that such record, a certified copy of which is attached to this petition as a part thereof, shows *inter alia* that the said Ray Bailey, being accused of the felonious crime of murder committed in the State of South Carolina, was arrested and held in custody in North Carolina under a warrant charging him with such crime; that in due form the Governor of South Carolina requested the Governor of North Carolina to surrender the fugitive accused to the proper authorities of the former State for trial; that the Governor of North Carolina duly approved such requisition and authorized the extradition of the accused; thereupon the accused secured a writ of *habeas corpus* from one of the Superior Court judges of North Carolina, thus staying extradition.

When such writ came on to be heard the regularity and validity of the extradition processes and proceedings were not questioned, but the accused through counsel set up a plea of *alibi* and demanded his discharge upon the ground that being *elsewhere* at the time he could not have committed the crime, and hence was not a fugitive from justice, subject to extradition.

Over the objection of the attorney general, who contended that upon the hearing of such writ only the regularity and validity of the extradition processes and proceedings could be reviewed, the Superior Court judge gave judgment discharging the accused.

Whereupon in due form the petitioner appealed from such judgment to the Supreme Court of North Carolina, who after hearing such appeal filed its opinion

and entered judgment in the case on the 26th day of October, 1932, affirming the judgment of the Superior Court, same being reported in — N. C., —; 166 Southeastern Rep., 165, and which decision is printed in the transcript of record herein.

For error or errors in said judgment the petitioner would respectfully show: That the statute of the State of North Carolina, designated as Section 2234 of Consolidated Statutes, in form and as construed and applied in the case at bar by the Supreme Court of that State contravenes Sec. 2, subd. 2, Article IV, of the Constitution of the United States, in that upon mere denial of guilt and upon contradicted proof of a plea of *alibi* the accused was discharged by writ of *habeas corpus*, whereas the court should have denied such writ and refused to discharge the accused thereunder, thus allowing extradition as the processes and procedure for extradition were admittedly regular and valid, and as the evidence of identity was at least contradictory, and in fact conclusively established the claim of petitioner that Bailey was the person who had committed the felony in South Carolina as charged.

The precise Federal question involved in this case and sought to be reviewed is:

1. Where the extradition processes and procedure are admittedly regular and the asylum State has approved extradition, can a court in the asylum State discharge the accused by writ of *habeas corpus?*

2. Where the extradition processes and procedure are admittedly regular and the asylum State has approved extradition, can a court in the asylum State

discharge under writ of *habeas corpus* where the accused felon merely denies his guilt and the evidence of identity offered is *contradictory,* or shows conclusively that the accused is the person who committed the felony in the demanding State?

Or expressed in another way: Is the statute of the State of North Carolina (Section 2234 of Consolidated Statutes), as construed and applied by the Supreme Court of that State, and insofar as such statute allows a judge of an intermediate court on hearing a writ of *habeas corpus* to absolutely discharge an accused felon whose extradition has been sought and allowed merely upon a denial of guilt and contradicted proof of an *alibi,* valid as against the petitioner whose right to extradite an accused felon when approved by the Governor of the asylum State is declared and protected by Section 2, subd. 2, Article IV, of the Constitution of the United States?

Or expressed in still another way: Can a State by statute, as in this case, empower its courts to discharge an accused felon, whose extradiction has been approved by the Governor of the asylum State, by writ of *habeas corpus* when the regularity and validity of the extradition processes and procedure are admitted, merely on contradictory and contested proof of identity when the right to extradiction is declared and protected to the demanding State by the Federal Constitution?

The State of South Carolina contends in this case that under the Federal Constitution the accused felon

must be delivered up and extradited when the Governor of the asylum State approves such extradition.

It is further claimed that when the extradition is approved by the Governor of the asylum State the only question that can be considered or determined by the courts of that State is whether or not the extradition processes and procedure are regular and valid on the face thereof.

At any rate, it is submitted that the courts of an asylum State cannot discharge an accused felon whose extradition has been approved by the Governor and where the processes and procedure are regular, upon merely contradictory proof of identity.

It is further submitted in this case that the proof on the hearing of the writ of *habeas corpus* conclusively establishes the identity of Bailey as the felon who committed the murder in South Carolina, and that to discharge him under the North Carolina statute constitutes a contravention of the rights of the State of South Carolina to have the accused felon extradited upon the authority of the Federal Constitution.

The Supreme Court of North Carolina has construed the cited statute of that State as giving the Superior Court judge power or authority on hearing a writ of *habeas corpus* to determine the identity and consequent guilt or innocence of the accused felon, all of which the petitioner contends contravenes its right of extradition protected by the Federal Constitution.

The record in this case, it is submitted, supports the following statement of facts:

On May 1st, 1932, one A. B. Hunt, a policeman of the city of Greenville, South Carolina, was killed with a pistol while in discharge of his duties in said city. The said Ray Bailey, *alias* Ray Keith, a citizen of the State of North Carolina, was accused of the murder, the authorities of South Carolina claiming that Bailey having come down from North Carolina to Greenville, South Carolina, and being surprised while engaged in an unlawful enterprise shot and killed Officer Hunt, and then fled back to North Carolina.

A warrant was duly issued for his arrest, and he was soon apprehended and held by the North Carolina officers for extradition to South Carolina to be tried for his crime.

The Governor of South Carolina issued extradition process for the return of Bailey for trial in South Carolina; and the Governor of North Carolina duly approved such extradition process and directed his surrender to the South Carolina authorities.

Thereupon, Bailey secured a writ of *habeas corpus* from Hon. Walter E. Moore, one of the Superior Court judges of North Carolina, who upon hearing the writ discharged Bailey from custody.

Three eyewitnesses to the homicide positively identified Bailey as the person who fired the fatal shot.

Besides, Bailey bore evidence of a pistol shot wound on his hand received in the affray.

Bailey denied the charge and produced several witnesses who testified that he was in Asheville, North Carolina, on the night of the shooting.

The judge decided that his plea of *alibi* had been sustained; that he was not a fugitive from justice; that no jury would convict him, and that he should not be required to undergo the expense of a trial in South Carolina.

The State of South Carolina duly appealed to the Supreme Court of the State of North Carolina from such judgment.

Such appeal coming on to be heard the judgment of the Superior Court was affirmed by the Supreme Court of North Carolina in its opinion filed on October 26th, 1932. See 166 S. E., page 165.

The petitioner now, within three months from the date of the filing of such decision, files its petition in the Supreme Court of the United States praying that a writ of *certiorari* issue to the Supreme Court of North Carolina, the highest court and court of last resort in that State, requiring the record in this case to be certified to this Court in order that such record may be examined to ascertain if the rights and privileges of the petitioner under the Federal Constitution have been contravened by the North Carolina statute as construed and applied by its Supreme Court.

In North Carolina appeal from the Superior to the Supreme Court is effected by writ of certiorari; and by reference to the petition of the State of South Carolina for such writ (R. 101) it will be seen that review and judgment was sought for all errors of law found in the record; so that in the court below the question that the North Carolina statute under review

as construed and applied by its Supreme Court was in conflict with the extradition clause in the Federal Constitution was fully and fairly made.

The right to extradite a fugitive felon is a Federal right, which may not be fettered by the statutory enactment or judicial decision of any State.

The North Carolina *habeas corpus* statute as construed and applied by its Supreme Court in this case constitutes an undue, arbitrary and unreasonable burden on the right of a sovereign State to have an accused felon extradited from a sister State with the approval of its Governor, in contravention of the extradition clause contained in the Federal Constitution as enlarged by the Act of Congress relative thereto.

The questions involved in this case are of grave public concern—can a felon be allowed to commit a murder in one State and flee to another and defy the extradition processes issued and approved by the Governors of both States by merely denying guilt and producing witnesses to testify that he was elsewhere when the crime was committed, the demanding State producing three eye witnesses who positively identified the accused, pointing to the gunshot wound on his hand as having been received at the time the officer was slain in South Carolina?

Accordingly, the State of South Carolina prays that this Court issue its writ of certiorari to the Supreme Court of the State of North Carolina, requiring the entire record of this case therein to be certified up in order that same may be examined for any alleged

errors therein, to the end that such errors, if any, may be corrected, and justice in that behalf done; and the petitioner will ever pray, etc.

Respectfully submitted,

THE STATE OF SOUTH CAROLINA,
Petitioner,
By JOHN M. DANIEL,
Attorney General;
J. IVEY HUMPHREY,
Asst. Attorney General;
J. INGRAM WILSON,
Asst. Attorney General;
J. G. LEATHERWOOD,
Solicitor;
QUEEN & BAILEY,
Attorneys for Petitioner.

WILLIAM C. WOLFE,
Counsel.

STATE OF SOUTH CAROLINA,
County of Richland:

Personally appeared before me John M. Daniel, who, being duly sworn, says: That he is the Attorney General of South Carolina; that, upon information and belief, the allegations contained in the foregoing petition are true; that such information is obtained from the various papers and records in the office of the Attorney general of South Carolina to which he has

access; and that he believes such statements in the petition to be true.

JOHN M. DANIEL.

Sworn to and subscribed before me this the 21st day of January, 1933.

JOHN F. MOORE [L. S.]
Notary Public, S. C.

My commission is at pleasure of the Governor.

BRIEF SUPPORTING PETITION.

The facts in the case are fully stated in the petition.

The right of a sovereign State to have an accused felon extradited for trial for a crime committed within its borders is a Federal right.

The extradition clause in the Federal Constitution constitutes a limitation upon the power of a State to enact any legislation burdening or fettering the right of extradition in any arbitrary or unreasonable manner.

Nor can the courts of any State so construe or apply its statute law as to unduly or unreasonably burden or impede the right of another State to have an accused felon extradited.

Such a statute would be unconstitutional and such a decision erroneous.

So in the instant case the *habeas corpus* statute of North Carolina as construed by its Supreme Court (and its construction of the statute law of its State must be accepted) gives judges of its superior (intermediate) courts the power on hearing a writ of *habeas corpus* in an extradition case to determine whether an accused felon is a fugitive from justice, which necessarily involves the question of guilt or innocence and the proof and trial of the plea of *alibi*, and to arbitrarily discharge even where the proof of identity is contradictory, or as in this case overwhelmingly against the accused.

We submit that the North Carolina statute which is brought in question in this case is unconstitutional as contravening the extradition clause in the Federal Constitution; and that the judgment of the Supreme Court of North Carolina upholding, construing and applying this statute, is erroneous, and should be reversed.

Sec. 2, subd. 2, Art. IV, of the Federal Constitution reads:

> "A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

The Supreme Court of South Carolina long ago declared:

> "Section 2, subd. 2, Art. IV, of the Constitution constitutes the fundamental law on this subject of all the co-states. It is a part of the municipal law of each, and is to be obeyed, observed and respected by every citizen and officer."
>
> *State* v. *Anderson*, 1 Hill (S. C.) 228, 61 Am. Dec. 163.

Congress some years ago passed an Act defining the rights and powers of the several States in relation to the extradition of fugitive felons, which is found in the U. S. Code, Sec. 662, Chap. 20, Title 18:

> "The decisions of the Supreme Court of the United States upon the subject of extradition between States are binding upon all persons and upon all Courts."
>
> *Dennison* v. *Christian*, 101 N. W. (Neb.) 1045.
>
> *Munsey* v. *Clough*, 196 U. S. 364, 49 L. Ed. 515.

The extradition clause contained in the Federal Constitution, as construed and applied in the decisions of the United States Supreme Court constitutes the paramount law of the land in respect to that subject, and this principle also applies to the remedial writ of *habeas corpus* when applicable:

> "The technical sufficiency of the indictment and the question of the procedure under it are not open to inquiry on *habeas corpus* to review the issuance of a warrant of arrest in interstate extradition proceedings."
>
> *Munsey* v. *Clough, supra.*

> "But the court will not discharge a defendant arrested under the governor's warrant where there is merely contradictory evidence on the subject of presence in or absence from the state, as *habeas corpus* is not the proper proceeding to try the question of alibi, or any question as to the guilt or innocence of the accused."
>
> *Munsey* v. *Clough, supra.*

This Court has held

> "that if upon the return to the writ of *habeas corpus* it is clearly shown that the relator is

> not a fugitive from justice, and there is no evidence from which a contrary view can be entertained, the court will discharge the person from imprisonment, but that mere evidence of an alibi, or evidence that the person demanded was not in the state as alleged, would not justify his discharge, where there was some evidence on the other side, as *habeas corpus* was not the proper proceeding to try the question of the guilt or innocence of the accused."
>
> *Hyatt* v. *New York*, 188 U. S. 710, 47 L. Ed. 661.

Where there is merely contradictory evidence on the subject of presence in or absence from the State, *habeas corpus* is not the proper proceeding to try the question of alibi, or any question as to the guilt or innocence of the accused.

12 Ruling Case Law, page 1248.

The questions of alibi or guilt or innocence or any matter of defense is not allowed to be passed on in *habeas corpus* proceedings; and the question of identity, which includes that of whether the accused is a fugitive from justice, will not be determined on such proceedings if the evidence is contradictory.

29 *Corpus Juris*, 82.

In the case at bar the Supreme Court of North Carolina held, in effect and in substance, that under the North Carolina statute the judge of the Superior Court could determine the question of *alibi*, or the guilt or innocence of the accused, or any matter of defense, or the identity of the accused, or whether

he was a fugitive from justice, and discharge even though the evidence was contradictory or as here where the evidence was overwhelmingly against the accused; and that such determination of the Superior Court judge could not be reviewed by the Supreme Court because the statute in question vested such power and discretion exclusively in the Superior Court judge.

In deciding in this case that the accused was not a fugitive from justice the lower court necessarily held that he was *elsewhere* when the murder occurred, and was therefore innocent of the crime as charged.

The Consolidated Statutes of North Carolina, Sec. 2234, which relates to proceedings in *habeas corpus*, defines the duty of the judge and prescribes the scope of the hearing as follows:

> (*a*) "examine into the facts contained in such return, and into the cause of the confinement."
>
> (*b*) "And if issue be taken upon the material facts * * * or other facts are alleged to show that the imprisonment * * * is illegal."
>
> (*c*) "The * * * judge shall proceed, in a summary way, to hear the allegations and proofs on both sides."
>
> (*d*) "And * * * do what to justice appertains in delivering, bailing or remanding such party."
>
> *Ex parte Bailey*, 166 S. E. 166.

In its opinion in this case the court declares:

> "This court said *In re Veasey*, 196 N. C. 662, 146 S. E. 599, 601: 'One who is sought to be

extradited may contest the validity of the extradition proceedings on writ of *habeas corpus* by showing (1) that he is not charged with a crime in the demanding state, or (2) that he is not a fugitive from the justice of the demanding state. Both of these are jurisdictional matters, and, if the accused can establish either, he is entitled to be discharged from custody. The first is a question of law to be determined upon the face of the requisition and the indictment or affidavit accompanying it, the law of the demanding state, of course, furnishing the test; while the second is a question of fact, which, when controverted, may be established by evidence like any other disputed fact.' See, also, *In re Hubbard*, 201 N. C. 472, 160 S. E. 569. All the authorities, including the decisions of this state, are to the effect that it is not proper to hear evidence upon the guilt or innocence of the prisoner or to take into consideration the merits of the case or of the defenses to be interposed at the trial or of an alibi, or of other matters involving the ultimate issue of guilt. Nevertheless, these are general observations and legal assertions. If the petitioner was not in the demanding state when the crime was committed, certainly he would not be guilty of a crime, and hence it is obvious that the question of presence in the demanding state at the time of the crime involves in a certain sense guilt or innocence, *alibi*, or other defenses that may be interposed at the trial. It is apprehended, however, that the courts mean to say that the bald question of presence in the demanding state at the time of the commission of the alleged crime was the primary question to be considered."

In this case the Supreme Court of North Carolina further declares:

> "The statute of this state, C. S. #2234, enjoins the julge 'to do what to justice appertains in delivering, bailing or remanding such party.' Obviously, the statute does not undertake to limit the judge in arriving at his conclusions, but apparently commits the result to the exercise of his sound legal discretion. The nearest approach to a positive declaration of this court upon the quantum of proof is contained in *State* v. *Herndon*, 107 N. C. 934, 12 S. E. 268, 269. Upon the facts appearing in the record, the Court said: 'If the judge, upon the investigation of the evidence on a petition for *habeas corpus*, adjudges that there is or is not probable cause, and admits or refuses to admit to bail, no appeal or certiorari lies either in favor of the state or the petitioner. * * * The quantum of evidence, and the number of witnesses to be examined, must necessarily be left also to the sound discretion of the judge who hears the writ, and his action in that regard cannot be reviewed."

* * * * * * *

> "Exercising the power delegated by statute and supported in principle by the decisions of this state, the hearing judge found certain facts and set them forth in his judgment."

* * * * * * *

> "Whatever may be the variable conclusions reached by other courts, that inquiry is settled

in North Carolina. The law is thus stated: 'The findings of fact made by the judge of the superior court, found, as they are, upon competent evidence, are also conclusive on us * * *.'"

* * * * * * *

"It is true that the judge made certain remarks appearing in the record, tending to show that he was undertaking to view the case from the standpoint of guilt or innocence or the ultimate probability of acquittal upon trial in the demanding state. If these remarks had been incorporated into the judgment itself, a wholly different factual situation would be presented upon the appeal, but the judge expressly declared in the judgment as signed that he found as a fact 'that he (prisoner) is not a fugitive from justice from the state of South Carolina, and was not present at the time of the commission of the alleged crime at Greenville, South Carolina'. The judgment as written and signed speaks the mind of the judge and his conclusion upon the matters in issue. Therefore the judgment as rendered must stand."

In re Bailey, 166 S. E. 166-167.

Thus it is clear that the court has held and decided in this case:

1. That the *habeas corpus* statute of North Carolina empowers a Superior Court judge to discharge an accused felon in an extradition proceeding arbitrarily and without limitation; whereas, that court should have decided that in such a case the Superior Court

judge was bound and limited by the extradition clause in the Federal Constitution and the decisions of the United States Supreme Court construing such clause.

2. That under the North Carolina statute in an extradition case the action of the Superior Court judge in discharging an accused felon under a writ of *habeas corpus* was not appealable or reviewable even by the State Supreme Court for either the demanding State or the petitioner; whereas, that court should have decided that this case was reviewable by it to ascertain whether or not the proceedings in and decision of the Superior Court were in conformity with the extradition clause in the Federal Constitution and the decisions of the Supreme Court of the United States construing such clause.

3. That the decision of the Superior Court judge in discharging the accused is under the North Carolina statute final and conclusive; whereas, the Supreme Court of North Carolina should have decided that the *habeas corpus* statute of North Carolina in so far as it prevents review of law or facts in an extradition case would be in conflict with the extradition clause in the Federal Constitution as well as the decisions of the United States Supreme Court construing such clause, and hence void.

We contend that in this case the North Carolina Supreme Court should have reversed the judgment of the Superior Court, holding (a) that such judgment was not final and conclusive in an extradition case but reviewable in order to ascertain whether or not such

judgment was in conformity with the extradition clause of the Federal Constitution and the decisions of this Court construing such clause and the enabling Act of Congress relative thereto, (b) that such *habeas corpus* act in so far as it attempted to vest final and non-reviewable power in the Superior Court judge to discharge arbitrarily and without limitation an accused felon in an extradition proceeding under writ of *habeas corpus* is in conflict with the extradition clause contained in the Federal Constitution and the decisions of this Court construing same, and hence void, and that (c) the judgment of the Superior Court should be reversed because that court attempted to, and did, pass upon questions of *alibi*, identity, guilt or innocence, and other matters of defense, and discharged the accused under writ of *habeas corpus* in an extradition proceeding when the evidence of identity was not only and at least *contradictory* but *conclusive* against him, all of which was in conflict with the extradition clause in the Federal Constitution and the enabling Act of Congress as construed and applied in the decisions of this Court.

There are a multitude of decisions respecting various phases of the law of extradition as well as that of *habeas corpus*, but we have contented ourselves with citing the several, as we think, leading cases and authorities controlling the precise questions presented for review.

We ask a writ of certiorari to the Supreme Court of North Carolina bringing up this case for review to the end that the judgment therein may be reversed

for error and the case remanded with proper instructions.

Respectfully submitted,

THE STATE OF SOUTH,
CAROLINA,
Petitioner,
By JOHN M. DANIEL,
Attorney General;
J. IVEY HUMPHREY,
Asst. Attorney General;
J. INGRAM WILSON,
Asst. Attorney General;
J. G. LEATHERWOOD,
Solicitor;
QUEEN & BAILEY,
Attorneys for Petitioner.

WILLIAM C. WOLFE,
Counsel.

(2966)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 685

THE STATE OF SOUTH CAROLINA, PETITIONER,

vs.

RAY BAILEY, ALIAS RAY KEITH.

BRIEF FOR RAY BAILEY, RESPONDENT.

CLYDE R. HOEY,
G. D. BAILEY,
DAN K. MOORE,
CHARLES HUTCHINS,
Attorneys for Ray Bailey, Respondent.

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THE STATE OF SOUTH CAROLINA, PETITIONER,

vs.

RAY BAILEY, ALIAS RAY KEITH.

BRIEF FOR RAY BAILEY, RESPONDENT.

Statement of the Case.

A warrant was issued in Greenville, South Carolina, charging Ray Bailey with complicity in the murder of A. B. Hunt, at Greenville, S. C., on May 1st, 1932. The Governor of the State of South Carolina made requisition on the Governor of North Carolina, and on May 9th, 1932, the Governor of North Carolina issued a warrant of extradition for the arrest of Ray Bailey, who was then in a hospital in Sylva, North Carolina, seriously injured from gunshot wounds. Ray Bailey was arrested on June 7th, 1932, by the

Sheriff of Jackson County, North Carolina, upon the warrant of extradition issued by the Governor of North Carolina and Bailey immediately applied for a writ of *habeas corpus,* which was granted by Walter E. Moore, a judge of the Superior Court of North Carolina. A hearing was held upon said writ at Sylva on June 27th, 1932, and, after the introduction of evidence by both sides and the argument of counsel, Judge Moore discharged Ray Bailey and entered judgment, as appears in the record, in which he found that Bailey was not a fugitive from justice in South Carolina.

Thereafter the State of South Carolina applied to the Supreme Court of North Carolina and obtained a writ of certiorari and this cause came for hearing before the Supreme Court of North Carolina and was heard upon the full record of the case and, after argument by counsel, the court filed an opinion in this case on October 26th, 1932, which appears in 203 N. C., page 363, and which opinion is printed in full in the addenda to this brief. In this opinion the Supreme Court of North Carolina affirmed the judgment theretofore rendered by Judge Moore.

The record in this case will disclose that Policeman Hunt was killed at Greenville, S. C., at 10:30 o'clock on the night of May 1st, 1932, and three witnesses testified that they recognized Ray Bailey as being present in Greenville, S. C., at the time of the shooting and that he was actively participating with others in the shooting.

It further appears from the evidence, as printed in the record, that these same witnesses identified three

other men from North Carolina, being two of the brothers of Ray Bailey, and a school teacher named Osborne Briggs, as being present and participating in the shooting of Hunt, and that these men were all arrested and warrants of requisition issued by the Governor of South Carolina upon the Governor of North Carolina, and warrants of extradition issued by the Governor of North Carolina, and these three men, to wit, Reece Bailey, Vernon Bailey and Osborne Briggs, were all arrested by the officers in North Carolina. Upon their arrest they made application for writs of *habeas corpus* and each case was heard before Judge Hoyle Sink, a judge of the Superior Court of North Carolina, at Asheville, N. C., and all of them discharged. In the case of Osborne Briggs it was shown by twenty-five people that he lived in Yancey County, N. C., 100 miles away from Greenville, and had never been in Greenville, S. C., in his life, and the evidence was so overwhelming as to all three of these men that the State of South Carolina abandoned entirely the effort to remove them to South Carolina for trial. Yet witnesses Corea and Singleton, the officers who identified in the instant case Ray Bailey, also identified these three men and swore as positively about their presence in South Carolina as they swore about the presence of Ray Bailey.

Ray Bailey was able to prove before Judge Moore in the *habeas corpus* hearing by a large number of disinterested witnesses that he was in Yancey County, North Carolina, on the night of May 1st, 1932, from 8 until 12 o'clock. This point was 100 miles distant from

Greenville, where Hunt was shot. Bailey was able to show that he was shot by Howell Wilson in an altercation over a card game and at least seven creditable witnesses testified to his presence in North Carolina at the very time that Hunt was being shot in Greenville, S. C. As an indication to the Court of the character of this testimony, the affidavit of Sinclair B. Conally (page 11, Record) shows that he is Dean in Biltmore College at Asheville, N. C., and that Ray Bailey, who is a young man about 21 years of age, and who had been under his tutorage in the college for the preceding six months, was seen by Conally between 10 and 11 o'clock on the night of May 1st, 1932, and they engaged in conversation, so that there could be no possibility of a mistake as to identity. The other six witnesses were just as positive as to identification of Bailey.

Each of the three witnesses from South Carolina who testified to the presence of Bailey in Greenville on the night of the shooting admitted that they had never seen Bailey before, did not know him, and the only opportunity they had to see him was while the shooting was going on, which lasted only a few seconds, and this was their only basis of identification. They did not testify as to where the person was shot until after they had visited the hospital at Sylva and observed where Bailey was shot, so they could very easily describe the wounds after they had observed them on Bailey.

A thorough reading of the record of the testimony offered will show that it was clear, strong, convincing and conclusive in favor of the findings made by Judge

Moore, as appears in his judgment, and the Judge had the opportunity to pass upon the credibility of the witnesses, their opportunity for knowing Bailey and the circumstances attendant upon the giving of their testimony and, after a full hearing of the entire matter, Judge Moore found the following facts:

1. That Ray Bailey (*alias* Ray Keith) is a citizen and resident of North Carolina.

2. That he is not a fugitive from justice from the State of South Carolina and was not present at the time of the commission of the alleged crime at Greenville, S. C.

There were other findings in the judgment, but these are the material ones and, upon these findings, the Judge discharged Ray Bailey, and the Supreme Court of North Carolina, upon appeal, affirmed that judgment.

Argument.

The opinion rendered by the Supreme Court of North Carolina on October 25, 1932, in this case presents clearly the legal principles involved and we maintain correctly interprets the law applicable to this case. This decision is in harmony with the decisions of the Supreme Court of North Carolina and in harmony with the majority view of the courts throughout the country, including the Supreme Court of the United States.

It has been the general doctrine in North Carolina, as it is the general doctrine throughout the United States, that extradition of a citizen from one state to another must be predicated upon the ground that he

is a fugitive from justice in the demanding state. The provision of the United States Constitution, Article 4, Section 2, and clause 2, reads as follows:

> "A person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime."

The gist of the foregoing provision of the Federal Constitution is that the person sought to be extradited is a fugitive from justice and this is recognized everywhere as a prerequisite to the right of extradition.

It certainly cannot be contended, in the light of all the decisions, that the mere issuing of a warrant in the demanding state and the requisition by the Governor of that state, and the issue of a warrant of extradition by the Governor of the asylum state, and the arrest of the person sought to be extradited, is sufficient *ipso facto* to transfer the person so arrested to the demanding state if this person elects to sue out a writ of *habeas corpus*. When that course is pursued, then it devolves upon the demanding state to satisfy the tribunal hearing the writ of *habeas corpus* that the person arrested and sought to be extradited is a fugitive from justice from the demanding state. Upon the failure of that state to so satisfy the court, then the person is entitled to discharge from arrest. The writ of *habeas corpus* furnishes the means and the occasion

for the person improperly arrested to show to the court that he is not a fugitive from justice and if that fact shall be established, then it is not only the right but the duty of the court to discharge him from custody.

This view is presented and discussed in the case of *Innes* v. *Tobin*, 240 U. S., page 127, and 60 Law Ed., page 562, where it is stated:

> "The surrender of a person in one state for removal to another as a fugitive is expressly or by necessary implication prohibited by the U. S. Rev. Stat. — 5278 Comp. Stat. 1913, — 10,126, where it clearly appears that the person was not and could not have been a fugitive from the justice of the demanding state."

In the case of *Biddinger* v. *Commissioner of Police of the City of New York*, 245 U. S., page 135; 62 Law Ed. 199, Mr. Justice Clark, writing the opinion of the court, says:

> "* * * that when the extradition papers required by the statute are in the proper form the only evidence sanctioned by this Court as admissible on such a hearing is such as tends to prove that the accused was not in the demanding state at the time the crime was alleged to have been committed. * * *"

Mr. Justice Harlan, writing the opinion of the court in *Illinois ex rel. McNichols* v. *Pease*, 207 U. S., page 100, 52 Law Ed. 125, discusses at length the right to review extradition proceedings under the writ of *habeas corpus* and lays down seven principles which

may be deduced from a number of cases therein cited, and the seventh and last principle is as follows:

> "One arrested and held as a fugitive from justice is entitled, of right, upon *habeas corpus*, to question the lawfulness of his arrest and imprisonment, showing by competent evidence, as a ground for his release, that he was not, within the meaning of the Constitution and laws of the United States, a fugitive from the justice of the demanding state, and thereby overcoming the presumption to the contrary arising from the face of an extradition warrant."

The case of *Hyatt* v. *New York ex rel. Corkran*, 186 U. S. 692, holds clearly that "one who was not within a state when the crime of larceny or false pretense, if ever, committed therein, cannot be deemed a fugitive 'from justice' within the meaning of U. S. Revised Statutes, Section 5278, providing for the interstate extradition of a fugitive from justice on demand of the executive of the state from which he has fled." This opinion further lays down the doctrine that "an extradition warrant issued by the Governor of a state is but *prima facie* sufficient to hold the accused; and it is open to him to show on *habeas corpus*, by admission or by other conclusive evidence, that the charge upon which his extradition is demanded assumes his absence from the demanding state at the time the crime was, if ever, committed."

The petitioner cites and relies upon the case of *Munsey* v. *Clough*, 196 U. S. 364; 49 Law Ed. 515, which is easily distinguishable from the case at bar, in that,

in the Munsey case, the accused refused to introduce evidence upon the question whether she was in fact a fugitive from justice and left the case for decision upon the papers before the Governor, upon which he acted in issuing the warrant of arrest. The court holds that the papers in that case made out a *prima facie* case and that the accused having waived any right to give further evidence, was concluded by that *prima facie* case. An entirely different state of facts exists in the case at bar where the accused was accorded the opportunity to offer evidence that he was not a fugitive from justice, and this evidence was offered and a Court of competent jurisdiction found as a fact that he was not a fugitive from justice.

Both the Constitution and statute law of North Carolina provide for the issue of the writ of *habeas corpus*, and Section 2234 Consolidated Statutes of North Carolina regulate the proceedings upon the return of the writ as follows:

> "The court or judge before whom the party is brought on a writ of *habeas corpus* shall, immediately after the return thereof, examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same has been upon commitment for any criminal or supposed criminal matter or not; and if issue be taken upon the material facts in the return, or other facts are alleged to show that the imprisonment or detention is illegal, or that the party imprisoned is entitled to his discharge, the court or judge shall proceed, in a summary way, to hear the

> allegations and proofs on both sides, and to do what to justice appertains in delivering, bailing or remanding such party."

Chapter 124, Public Laws of 1931 of North Carolina, now Section 4556 (I) of the Consolidated Statutes, provides the method by which a person accused may apply for writ of *habeas corpus* as follows:

> "No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he has been informed of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand legal counsel; and if the prisoner, his friends or counsel shall state that he or they desire to test the legality of the arrest, the prisoner shall be taken forthwith before a judge of a court of record in this State, who shall fix a reasonable time to be allowed him within which to apply for a writ of *habeas corpus*. And when such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the public prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding State."

One who is sought to be extradited may contest the validity of the extradition proceedings on writ of *habeas corpus* by showing:

(1) That he is not charged with a crime in the demanding state, or

(2) That he is not a fugitive from the justice of the demanding state.

Both of these are jurisdictional matters, and, if the accused can establish either, he is entitled to be discharged from custody. The first is a question of law to be determined upon the face of the requisition and indictment or affidavit accompanying it, the law of the demanding State of course furnishing the test; while the second is a question of fact which, when controverted, may be established by evidence like any other disputed fact.

196 N. C. 662.
146 S. E. 599, 601.
In re Hubbard, 201 N. C. 472.
160 S. E. 569.

Under the law of North Carolina the judge of the Superior Court is charged with the duty and responsibility of hearing the evidence and finding the facts and his finding of facts is conclusive. In the case at bar the judge heard the evidence upon the question of whether or not Ray Bailey was a fugitive from justice. He found the facts and upon his finding of facts he predicated his judgment. The Supreme Court of North Carolina uniformly holds that the findings of fact by the judge, if there is any competent evidence upon which to base the findings, are conclusive and binding, and this seems to be the general doctrine both with State and Federal courts.

In re Bailey, 203 N. C. 363.
166 S. E. 166, 167.
Oteiza y Cortes v. *Jacobus,* 136 U. S. 338.

Under the laws of North Carolina and the decisions of the Supreme Court of that State the accused, when arrested upon a warrant of extradition, is entitled to sue out a writ of *habeas corpus* and to have the matter determined as to whether or not he is a fugitive from justice. The law places this duty and responsibility upon a judge of the Superior Court, or one of the justices of the Supreme Court, and clothes the judge with the power, as it makes it his duty upon the hearing, to find the facts and determine the controverted question as to whether or not the accused is in fact a fugitive from the justice of the demanding State. There is nothing in the statute law or in the decisions of the courts of North Carolina in conflict with the Federal Constitution, or Federal Statutes, or the decisions of the United States Supreme Court. There must of necessity be some tribunal clothed with power to find the facts.

The sacred writ of *habeas corpus* would be rendered hollow and ineffective if, upon the hearing, the Judge should do no more than merely inspect the papers to see if they were in proper form and, as the Supreme Court of North Carolina says in the instant case, if that should be the rule, it would be possible for one witness to make a superficial identification of a person accused and have him carried a thousand miles away to a demanding state, when probably one hundred creditable witnesses could and would testify that he was not a fugitive from justice and was not even in the demanding state at the time the crime was committed. Unless the Judge has the power to find the facts, then

nothing would avail the accused and he would be removed to a distant state without either the power or the capacity to carry the necessary witnesses to that state to establish that he was not a fugitive from justice, and the rights of the citizen would be seriously infringed and the virtue of the writ of *habeas corpus* would be rendered null and ineffective.

The present case has proceeded in an orderly fashion with full opportunity to the petitioner to present its testimony before a Court of competent jurisdiction and that Court, charged with the duty and responsibility of passing upon the matter, has found the facts adverse to the petitioner and there is no substantial reason or ground for overruling the decision of the Supreme Court of North Carolina, which is printed in full in the Addenda to this brief.

Respectfully submitted,

RAY BAILEY,

Respondent,

By CLYDE R. HOEY,
G. D. BAILEY,
DAN K. MOORE,
CHARLES HUTCHINS,
Attorneys for Respondent.

ADDENDA.

Below is opinion rendered by the Supreme Court of North Carolina in full, including head notes, as follows:

In the Matter of RAY BAILEY, *alias* RAY KEITH.

(Filed 26 October, 1932.)

1. Extradition, B c.—Upon hearing of habeas corpus in extradition proceedings court must hear allegations and proof on controverted facts.

Where a writ of *habeas corpus* has been issued in extradition proceedings it is the statutory duty of the court, if an issue is raised concerning material facts, to "proceed in a summary way to hear the allegations and proof of both sides," and the words of the statute import more than a mere perfunctory or formal hearing. C. S., 2234.

2. Same.—Court may determine whether prisoner was in demanding state at time of crime upon issue of whether he is a fugitive from justice.

Upon the hearing of a writ of *habeas corpus* in extradition proceedings the hearing judge may determine from the evidence, when the fact is controverted, whether the prisoner was in the demanding state at the time of the commission of the crime upon the question of whether he is a fugitive from justice.

3. Same.—Appeal and Error, J c.—Judge hearing habeas corpus in extradition proceedings must determine disputed facts in his discretion.

Where upon a writ of *habeas corpus* in extradition proceedings it is controverted as to whether the

prisoner was in the demanding state at the time of the commission of the crime an issue of fact is raised for the determination of the hearing judge in his sound discretion, and his finding upon supporting evidence that the prisoner was not a fugitive from justice is conclusive on appeal.

4. Extradition, B a.—Upon finding that prisoner was not a fugitive from justice judgment releasing prisoner is correct.

Where on a hearing of a writ of *habeas corpus* in extradition proceedings the court finds upon supporting evidence that the prisoner was not a fugitive from justice and was not in the demanding state at the time of the commission of the crime, and releases the prisoner, the judgment speaks the mind of the judge, and is not affected by certain remarks of the judge in the record outside the judgment indicating that he decided the case from the standpoint of the guilt or innocence of the prisoner, and the judgment will be affirmed.

Habeas Corpus. Before Moore, J., 27 June, 1932. From Jackson.

On 5 May, 1932, a warrant was issued by a magistrate of Greenville County, South Carolina, charging that on 1 May, 1932, Ray Bailey alias Ray Keith, "did shoot, kill and murder one A. B. Hunt" in the town of Greenville, South Carolina. The Governor of South Carolina duly made requisition upon the Governor of North Carolina, and on 9 May, 1932, the Governor of North Carolina duly issued a warrant of extradition, requiring the arrest of said Bailey. Bailey was arrested on 7 June, by the sheriff of Jackson County, and thereupon applied for a writ of habeas corpus. The writ was issued by Moore, J., on 7 June, and was heard by him on 27 June, 1932. At the hearing it appeared that

Hunt had been killed in Greenville, South Carolina, at about 10:30 p. m. on the night of 1 May. A police officer of Greenville, South Carolina, who claimed to be present at the killing testified positively to the identification of Bailey, and further testified that, in the gun battle between Bailey and police officers, resulting in the death of Hunt, Bailey had been shot by police officers and seriously wounded in the hand and abdomen. Another police officer of Greenville, South Carolina, who claimed to be present at the shooting also positively identified Bailey as the man who killed Hunt. A merchant of Greenville, South Carolina, also identified Bailey as the slayer of Hunt.

Bailey offered evidence of many witnesses as to his whereabouts on the day of the killing, and further offered positive evidence from several disinterested witnesses that he was found shot down on the road between Burnsville and Asheville at about 10:30 o'clock on the night of 1 May. The place, where the testimony showed that he was found lying in the road seriously wounded, was approximately eighty-five miles from Greenville, South Carolina. The evidence for Bailey further tended to show that the persons who found him lying in the road seriously wounded carried him to Asheville and from thence he was then carried to a hospital at Sylva in Jackson County. Bailey testified that he had been shot by a companion on the night of 1 May, resulting from a quarrel over a poker game, and offered testimony of disinterested witnesses tending to corroborate his statement. Bailey denied that he was in South Carolina on the day of the crime or that he had been in the state for some time prior thereto, and contended that he was charged with the crime merely because he had been found in a hospital seriously wounded early the next morning. There was further evidence to the effect that police officers of South Carolina had arrested other members of the

Bailey family, charging them with the murder of Hunt, and positively identifying them as present at the killing, and that failing to offer at the hearing evidence of identity, they had all been discharged under writ of habeas corpus.

Bailey offered the evidence and affidavits of approximately twenty witnesses, and the State offered affidavits and testimony of twelve witnesses.

At the conclusion of the hearing the record shows the following: (By the Court) "Gentlemen, I think there has been an issue raised here, I don't think I have a right to pass on, that of identity, and at the same time I don't think it would be fair to the defendant to send him to South Carolina to stand a trial, as it would be very expensive to him and his folks; under the testimony I don't think there would be a jury anywhere that would ever find him guilty beyond a reasonable doubt. I shall, therefore, discharge him under the writ and let him go.

The respondents except to the rulings of the court and hereby give notice in open court of intention to appeal to the Supreme Court, and also gave notice in open court that respondents will make application to the Supreme Court for a writ of certiorari for the purpose of reviewing the record and rulings and findings of the court."

Thereafter a formal judgment was entered as follows:

"This cause coming on to be heard and the same being heard before the undersigned judge, resident of the 20th Judicial District of North Carolina, at Sylva, N. C., on 27 June, 1932, upon the petition and writ of habeas corpus in this cause, and it appearing to the Court that a fugitive warrant was issued for Ray Bailey, alias Ray Keith, and that thereafter the Governor of North Carolina, upon request of the State of South Carolina, issued warrant of extradition for

Ray Bailey, alias Ray Keith, and thereafter petition for writ of habeas corpus was sworn out by the said Ray Bailey, and writ of habeas corpus was thereupon issued, and the State of South Carolina appearing in court and being represented by Hon. J. G. Leatherwood, John M. Queen, solicitor of the 20 Judicial District, and D. D. Alley; and the State of South Carolina having introduced its evidence, and the defendant, Ray Bailey, having introduced evidence, all of which appears in the record;

Thereupon, the court finds as a fact:

1. That Ray Bailey (alias Ray Keith) is a citizen and resident of the State of South Carolina.

2. That he is not a fugitive from justice from the State of South Carolina, and was not present at the time of the commission of the alleged crime at Greenville, South Carolina.

3. That the State of South Carolina has failed to show probable cause for holding the said Ray Bailey in custody, or that he committed the alleged crime—the murder of A. B. Hunt, and has failed to produce sufficient evidence to warrant the court in refusing the writ, and the court finding from all the evidence introduced in this cause that the petitioner is entitled to the relief sought in his petition and the writ of habeas corpus;

It is, therefore, upon motion of Clyde R. Hoey, G. D. Bailey, Dan K. Moore and Charles Hutchins, attorneys for the petitioner, considered, ordered, decreed and adjudged by the court that the petition and writ be allowed and that the defendant be and he is hereby released from custody."

A petition was filed in the Supreme Court of North Carolina for a writ of certiorari to bring up the record, which was duly granted on 31 August, 1932, and the

record was duly certified by Judge Moore on 13 September, 1932.

John M. Daniel, Attorney-General of South Carolina, Cordie Page, Assistant Attorney-General of South Carolina, J. G. Leatherwood and Queen & Alley for demanding State.

Clyde R. Hoey, G. D. Bailey, Dan K. Moore and Charles Hutchins for petitioner.

Brogden, J. When a writ of habeas corpus has been issued to inquire into the legality of an arrest on a warrant of extradition, what is the function of the hearing judge and the legal effect of his findings of fact?

C. S., 2234, defines the duty of the judge before whom the writ is returnable, and also prescribes the scope of the hearing. He shall immediately (*a*) "examine into the facts contained in such return and into the cause of the confinement;

(*b*) "and if issue be taken upon the material facts * * * or other facts are alleged to show that the imprisonment * * * is illegal;

(*c*) "the * * * judge shall proceed in a summary way to hear the allegations and proofs on both sides;

(*d*) "and * * * do what to justice appertains, in delivering, bailing or demanding such part."

The statutory words "if issue be taken upon the material facts * * * the judge shall proceed in a summary way to hear the allegations and proofs of both sides," preclude the idea that such hearing shall be perfunctory and merely formal. This Court said, *In re Veasey*, 196 N. C. 662, 146 S. E. 599: "One who is sought to be extradited may contest the validity of the extradition proceedings on writ of *habeas corpus* by showing (1) that he is not charged with a crime in the demanding state, or (2) that he is not a fugitive

from the justice of the demanding state. Both of these are jurisdictional matters, and, if the accused can establish either, he is entitled to be discharged from custody. The first is a question of law to be determined upon the face of the requisition and the indictment or affidavit accompanying it, the law of the demanding state, of course, furnishing the test; while the second is a question of fact which, when controverted, may be established by evidence like any other disputed fact." See, also, *In re Hubbard*, 201 N. C. 472. All the authorities, including the decisions of this State, are to the effect that it is not proper to hear evidence upon the guilt or innocence of the prisoner or to take into consideration the merits of the case or of the defense to be interposed at the trial or of an alibi, or of other matters involving the ultimate issue of guilt. Nevertheless, these are general observations and legal assertions. If the petitioner was not in the demanding state when the crime was committed, certainly he could not be guilty of a crime, and hence it is obvious that the question of presence in the demanding state at the time of the crime involves in a certain sense guilt or innocence, alibi or other defenses that may be interposed at the trial. It is apprehended, however, that the courts mean to say that the bald question of presence in the demanding state at the time of the commission of the alleged crime was the primary question to be considered.

In arriving at a conclusion as to whether the prisoner should be remanded or discharged, a difficult question stands at the threshold. What question of proof shall the hearing judge require in order to determine the ultimate issue of facts as to whether the prisoner was in the demanding state at the time of the crime? It has been asserted that if the evidence is conflicting upon the subject of presence in the demand-

ing state at the time the crime was committed that the prisoner is not entitled to be discharged, but should be remanded for trial. It has also been said that if there is some evidence of the presence of the prisoner in the demanding state at the time the offense was committed, a discharge is not warranted or justified. See *Munsey* v. *Clough*, 196 U. S. 364, 49 L. Ed. 515; *Hyatt* v. *New York*, 188 U. S. 691, 47 L. Ed. 657. That is to say, that if there is more than a scintilla of evidence in favor of the demanding state, the judge should discharge the writ of *habeas corpus* and remand the prisoner. Hence, if any sort of reckless or fanciful testimony should be offered tending to show the presence of a prisoner in the demanding state, the accused might thereupon offer the testimony of a thousand disinterested persons who knew absolutely that he was not in the demanding state at the time, nevertheless the courts would be powerless to afford protection. Manifestly under such interpretation the beneficent powers of *habeas corpus* would be set at naught and the "hearing" provided by law would be no more than a hollow form or fleeting shadow. Nevertheless the demanding state is vitally interested in the outcome. It has the right to try and punish offenders against its peace and dignity, committed within its jurisdiction. Consequently a difficult task is imposed upon a judge in undertaking to decide the important question involved.

The statute of this State, C. S., 2234, enjoins the judge "to do what to justice appertains in delivering, bailing or remanding such party." Obviously the statute does not undertake to limit the judge in arriving at his conclusions, but apparently commits the result to the exercise of his sound legal discretion. The nearest approach to a positive declaration of this Court upon the quantum of proof is contained in *S.* v. *Herndon*, 107 N. C. 934, 12 S. E. 268. Upon the facts appearing

in the record the Court said: "If the judge, upon the investigation of the evidence on a petition for *habeas corpus*, adjudges that there is or is not probable cause, and admits or refuses to admit to bail, no appeal or certiorari lies, either in favor of the state or the petitioner. * * * The quantum of evidence and the number of witnesses to be examined must necessarily be left also to the sound discretion of the judge who hears the writ, and his action in that regard cannot be reviewed."

In the case at bar a controversy of fact arose between the contending parties, that is the demanding state and the prisoner, as to whether the prisoner was in the demanding state at the time the alleged offense was committed. The writ of *habeas corpus* was created and fashioned for the express purpose of determining such controverted fact. The statute and public policy require that such fact be determined in a summary manner. Doubtless in given cases different minds would work out diverse conclusions, but after all it is perhaps wise that the determination of the ultimate fact should be lodged in the sound legal discretion of an impartial judge, commissioned by the law of the land and the inherent sense of the responsibility of his high office "to do what to justice appertains." He hears the witnesses and observes their mental leanings or bias toward the question involved. He senses the atmosphere of the case. Moreover it would doubtless be a dangerous experiment to undertake by a judicial decree of an appellate court to prescribe a legal straitjacket for such matters.

Exercising the power delegated by statute and supported in principle by the decisions of this State, the hearing judge found certain facts and set them forth in his judgment. The last inquiry in the solution of the appeal is: What is the effect of the findings of fact set out in the judgment? Whatever may be the vari-

able conclusions reached by other courts, that inquiry is settled in North Carolina. The law is thus stated: "The findings of fact made by the judge of the Superior Court, found as they are upon competent evidence, are also conclusive on us, and we must therefore base our judgment upon his findings, which amply sustain his odrer." *In re Hamilton,* 182 N. C. 44, 108 S. E. 385. See, also, *Clegg* v. *Clegg,* 186 N. C. 28, 118 S. E. 824; *In re Hayes,* 200 N. C. 133, 156 S. E. 791.

It is true that the judge made certain remarks appearing in the record tending to show that he was undertaking to view the case from the standpoint of guilt or innocence or the ultimate probability of acquittal upon trial in the demanding state If these remarks had been incorporated into the judgment itself, a wholly different factual situation would be presented upon the appeal, but the judge expressly declared in the judgment as signed that he found as a fact "that he (prisoner) is not a fugitive from justice from the State of South Carolina, and was not present at the time of the commission of the alleged crime at Greenville, South Carolina." The judgment as written and signed speaks the mind of the judge and his conclusion upon the matters in issue. Therefore, the judgment as rendered must stand.

Affirmed.

SUPREME COURT OF THE UNITED STATES.

No. 685.—October Term, 1932.

The State of South Carolina, Petitioner, *vs.* Ray Bailey, alias Ray Keith.	On Writ of Certiorari to the Supreme Court of the State of North Carolina.

[May 22, 1933.]

Mr. Justice McReynolds delivered the opinion of the Court.

Sunday night, May 1st, 1932, (probably about 10:30 Eastern Time) Hunt, a police officer, was murdered on a well-lighted street in Greenville, South Carolina. An affidavit by policeman Corea, May 5th, before a local magistrate charged Ray Bailey, respondent here, with the crime. As provided by the federal statute, demand was made upon the Governor of North Carolina for delivery of the accused as a fugitive from justice. Bramlett and Hammond were designated as agents to bring him back.

This requisition was promptly honored; and a warrant issued directing officers in North Carolina to arrest respondent, "afford him such opportunity to sue out a writ of habeas corpus as is prescribed by the laws of this State and to thereafter deliver him into the custody of the said C. R. Bramlett and L. W. Hammond, to be taken back to the said State, from which he fled." June 7th, acting as commanded, the sheriff of Jackson County took him into custody. He at once obtained a writ of habeas corpus from the local Superior Court. His petition therefor alleged illegality of custody "for that the defendant is charged with an offense in the State of South Carolina, to-wit, the murder of A. B. Hunt, on or about the 1st day of May, 1932, when, at which time, this affiant was in the State of North Carolina, and was not in the State of South Carolina."

The sheriff in his return to the writ alleged that Bailey "is being legally and lawfully held in custody after having been arrested on a warrant of extradition issued by the Governor of North Carolina on the 9th day of May, 1932, upon requisition for same by the Governor of South Carolina, on and for a charge of murder alleged to have been committed in the State of South Carolina, said warrant of extradition having been duly executed

by me on the said Ray Bailey, alias Ray Keith, on the 7th day of June, 1932."

The Judge of the Superior Court sitting at Sylva, N. C., heard the cause June 27th, 1932. A number of affidavits were received without objection, and thirty or more witnesses were examined in open court. At the conclusion of the testimony the Judge announced:

> "Gentlemen, I think there has been an issue raised here, I don't think I have a right to pass on, that of identity, and at the same time I don't think it would be fair to the defendant to send him to South Carolina to stand a trial, as it would be very expensive to him and his folks; under the testimony I don't think there would be a jury anywhere that would ever find him guilty beyond a reasonable doubt. I shall, therefore, discharge him under the writ and let him go."

This formal judgment followed:

> "1. That Ray Bailey (alias Ray Keith) is a citizen and resident of the State of North Carolina.
>
> "2. That he is not a fugitive from justice from the State of South Carolina, and was not present at the time of the commission of the alleged crime at Greenville, South Carolina.
>
> "3. That the State of South Carolina has failed to show probable cause for holding the said Ray Bailey in custody, or that he committed the alleged crime—the murder of A. B. Hunt, and has failed to produce sufficient evidence to warrant the Court in refusing the Writ, and the Court finding from all the evidence introduced in this cause that the petitioner is entitled to the relief sought in his petition and the Writ of Habeas Corpus; . . .
>
> "It is, therefore, upon motion . . . considered, ordered, decreed and adjudged by the Court that the petition and Writ be allowed and that the defendant be and he is hereby released from custody."

The Supreme Court of North Carolina reviewed the cause upon certiorari under title—"In the matter of Ray Bailey alias Ray Keith". It affirmed the challenged judgment and, among other things, said—

> "In the case at bar a controversy of fact arose between the contending parties, that is the demanding state and the prisoner, as to whether the prisoner was in the demanding

state at the time the alleged offense was committed. The Writ of Habeas Corpus was created and fashioned for the express purpose of determining such controverted fact. The statute and public policy require that such fact be determined in a summary manner. Doubtless in given cases different minds would work out diverse conclusions, but after all it is perhaps wise that the determination of the ultimate fact should be lodged in the sound legal discretion of an impartial judge, commissioned by the law of the land and the inherent sense of the responsibility of his high office 'to do what to justice appertains'. He hears the witnesses and observes their mental leanings or bias toward the question involved. He senses the atmosphere of the case. Moreover it would doubtless be a dangerous experiment to undertake by a judicial decree of an appellate court to prescribe a legal strait-jacket for such matters.

"Exercising the power delegated by statute and supported in principle by the decisions of this state, the hearing judge found certain facts and set them forth in his judgment. The last inquiry in the solution of the appeal is: What is the effect of the findings of fact set out in the judgment? Whatever may be the variable conclusions reached by other courts, that inquiry is settled in North Carolina. The law is thus stated: 'The findings of fact made by the judge of the Superior Court, found as they are upon competent evidence, are also conclusive on us, and we must therefore base our judgment upon his findings, which amply sustain his order.' *In re Hamilton*, 182 N. C. 44, 108 S. E. 385. See also *Clegg* v. *Clegg*, 186 N. C. 28, 118 S. E. 824; *In re Hayes*, 200 N. C. 133, 156 S. E. 791."

The matter is here on certiorari.

No question is raised concerning the form or adequacy of the writ issued by the Governor of North Carolina.

Prima facie Bailey was in lawful custody and upon him rested the burden of overcoming this presumption by proof. *McNichols* v. *Pease*, 207 U. S. 100, 109.

This he undertook to do. His own affidavit positively asserted his presence in North Carolina when the alleged crime occurred. He narrated his movements, all within that State, from Sunday morning, May 1st, when he was at Asheville (north of Greenville, S. C., sixty-one miles over a well-paved highway) until 5:30 o'clock Monday morning when he entered the hospital at Sylva, N. C.,

fifty miles southwest of Asheville (a paved highway connects these towns) under an assumed name. A number of affidavits and the testimony of several witnesses given in open court tend to support his narrative.

He claimed that he left Asheville about dark Sunday night, May 1st, in a car with a friend with whom he had been drinking and gambling during the afternoon; both were under the influence of alcohol; they were going towards Bailey's home in Yancey County; at a point on the roadside some twenty-five miles north of Asheville, between ten and eleven o'clock, P. M. (Central time) this friend after shooting him left him on the roadside; shortly thereafter two strangers appeared, put him in their car and carried him to his brother's house in Asheville; from there an ambulance conveyed him to the hospital, fifty miles away, where he gave an assumed name.

The doctors found two bullets had passed through his body; also that a bullet had wounded his right hand at the base of the thumb.

Although present in court at the hearing Bailey did not take the stand and several persons who probably could have thrown much light upon the issue were neither called nor accounted for. Among these were the respondent's friend who shot him, the brother to whose house at Asheville respondent was taken, two women said to have been there, and the doctor who there dressed his wounds. Other important witnesses made *ex parte* affidavits.

Such a tale should have been subjected to rigid scrutiny. The hearing was in no sense a criminal trial and the judge would have been well advised if he had demanded that the prisoner present himself for examination; also should show what effort had been made to secure the presence of important witnesses in order that they might be questioned. Viewed as a whole the evidence for respondent leaves much to be desired—certainly it is unsatisfactory. If true, it supports the conclusions of the Judge that Bailey had not fled from the justice of South Carolina.

On the other hand, the demanding State presented three witnesses—police officers Corea and Singleton and a merchant—residents of Greenville, S. C., who identified Bailey and positively asserted that in their presence he shot officer Hunt about 10:30 Sunday night, May 1st. They had never seen Bailey until he suddenly appeared and commenced to shoot. The officers gave a circumstantial account of the homicide, declared they were within a

few feet of the assailant, shot at him nine times after he had fatally wounded Hunt and thought they wounded him in the body and right hand. They further said that during the melee an automobile stopped nearby and its occupants shot at them many times. The culprit finally entered and escaped in that car. The whole affray continued for only a very short time—a few moments.

While some circumstances tend to support these statements, they are not free from doubt. If true, Bailey was a fugitive.

The record presents an irreconcilable conflict of evidence. It is not possible to say with certainty where the truth lies.

The rights of the parties depend upon the proper construction and application of Art. IV, Sec. 2, par. 2, of the Federal Constitution[1] and Sec. 5278, Rev. Stat. (U. S. Code, Tit. 18, Sec. 662)[2] derived from the Act of February 12, 1793.

The demanding State asserted a right to the custody of the respondent under the Federal Constitution and statute. He claimed that these impliedly forbade his surrender since the evidence made it clear that he was beyond the limits of South Carolina at the time of the homicide and, therefore, was not a fugitive from the justice of that State.

These questions of federal right were properly submitted for consideration by the State court upon the return to the writ of

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[1]A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[2]Rev. Stats. Sec. 5278. Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory.

habeas corpus. And it was the duty of that court to administer the law prescribed by the Constitution and statute of the United States, as construed by this Court. *Second Employers' Liability Cases*, 223 U. S. 1, 55; *Cincinnati, New Orleans & Texas Pacific Ry. Co.* v. *Rankin*, 241 U. S. 319, 326.

In effect the matter for determination was whether the accused appeared to be held contrary to the Federal Constitution and laws. The ultimate question of his guilt or innocence of the charge of murder preferred against him did not arise—the sole point for decision related to his absence from the State of South Carolina at the time of the crime. It was wholly beyond the province of the judge to speculate, as he seems to have done, concerning the probable outcome of any trial which might follow rendition to the demanding State. The circumstances require this Court to search the record and determine for ourselves whether upon the facts presented the courts below reached the proper conclusion.

The applicable provision of the Federal Constitution and of the statute intended to implement it have often been considered here. Some of the more important cases are collected in the margin.[3]

In *Munsey* v. *Clough*, 196 U. S. 364, 374, through Mr. Justice Peckham, this Court said—"When it is conceded, or when it is so conclusively proved, that no question can be made that the person was not within the demanding State when the crime is said to have been committed, and his arrest is sought on the ground only of a constructive presence at that time, in the demanding State, then the court will discharge the defendant. *Hyatt* v. *Cockran*, 188 U. S. 691, affirming the judgment of the New York Court of Appeals, 172 N. Y. 176. But the court will not discharge a defendant arrested under the governor's warrant where there is merely contradictory evidence on the subject of presence in or absence from the State, as habeas corpus is not the proper proceeding to try the question of alibi, or any question as to the guilt or innocence of the accused."

[3]Kentucky *v.* Dennison, 24 How. 66; Ex parte Reggel, 114 U. S. 643; Roberts *v.* Reilly, 116 U. S. 80; Hyatt *v.* People of New York *ex rel.* Corkran, 188 U. S. 691; Munsey *v.* Clough, 196 U. S. 364; Appleyard *v.* Massachusetts, 203 U. S. 222; McNichols *v.* Pease, 207 U. S. 100; Drew *v.* Thaw, 235 U. S. 432; Innes *v.* Tobin, 240 U. S. 127; Biddinger *v.* Commissioner of Police, 245 U. S. 128.

Speaking for the Court in *McNichols* v. *Pease*, 207 U. S. 100, 112, Mr. Justice Harlan said—"When a person is held in custody as a fugitive from justice under an extradition warrant, in proper form, and showing upon its face all that is required by law to be shown as a pre-requisite to its being issued, he should not be discharged from custody unless it is made clearly and satisfactorily to appear that he is not a fugitive from justice within the meaning of the Constitution and laws of the United States. We may repeat the thought expressed in Appleyard's case, above cited, that a faithful, vigorous enforcement of the constitutional and statutory provisions relating to fugitives from justice is vital to the harmony and welfare of the States, and that 'while a State should take care, within the limits of the law, that the rights of its people are protected against illegal action, the judicial authorities of the Union should equally take care that the provisions of the Constitution be not so narrowly interpreted as to enable offenders against the laws of a State to find a permanent asylum in the territory of another State.'"

Considering the Constitution and statute and the declarations of this Court, we may not properly approve the discharge of the respondent unless it appears from the record that he succeeded in showing by clear and satisfactory evidence that he was outside the limits of South Carolina at the time of the homicide. Stated otherwise, he should not have been released unless it appeared beyond reasonable doubt that he was without the State of South Carolina when the alleged offense was committed and, consequently, could not be a fugitive from her justice.

The record discloses only a conflict of evidence; the requirement which we have indicated has not been met; and the challenged judgment must be reversed.

The cause will be remanded to the Supreme Court of North Carolina for further proceedings not inconsistent with this opinion.

Reversed.

Mr. Justice BRANDEIS and Mr. Justice BUTLER are of the opinion that the evidence, while possibly sufficient to sustain, does not require a finding that there is probable cause to believe that the accused was a fugitive from South Carolina, and therefore this court is not warranted in reversing the judgment of the Supreme Court of North Carolina.